Supreme Court, U.S.
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No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1991

Lonnie E. Willoughby, Jr.
Petitioner

v.

Leona Willoughby
Respondent

Petition for Writ of Certiorari to Court of Appeals, Fifth District, State of Florida

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QUESTIONS PRESENTED

1. Is it a denial of due process of law when an Equity Court trial judge shows favoritism to the Plaintiff and her attorney and a Cross-claim Defendant that causes severe prejudice to the other Defendant?

2. Is it a denial of due process of law for an Equity Court trial judge to allow the Plaintiff's attorney to ambush a co-trustee Defendant during trial with surprise complaints not noticed to the co-trustee in Plaintiff's pleadings?

3. Is it a denial of due process of law for a trial judge to evaluate a co-trustee's performance by the trial judge's "personal opinions" when his "opinions" conflict greatly with published trust administrations standards?

4. Is it a denial of due process of law for Appellate Court's "motion panel" to issue orders to a pro se Appellant that are extremely vague and impossible to understand with any reasonable degree of clarity and specificity?

5. Is it a denial of due process of law when Appellate Court's "motion panel" orders Appellant to stop reporting actions of the trial attorneys and trial judge that severely prejudiced the case against Defendant?

6. Is it a denial of constitutionally protected civil rights when Appellate Court's "motion panel" strikes entirely a pro se Appellant's appeal brief and then strikes two essential arguments from the amended brief because the arguments contained complaints about unfair and unethical actions of the trial attorneys and trial judge?

7. Is it a denial of due process of law for Appellate Court's "decision panel" to ignore controlling law regarding appropriate due process standards?

8. Is it a denial of due process of law for Appellate Court's "decision panel" to ignore applicable published legal standards regarding trust administration procedures?

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS, FIFTH DISTRICT, FLORIDA

OPINION BELOW 2

JURISDICTION..... 2

CONSTITUTIONAL AND STATUTORY ISSUES INVOLVED..... 3

STATEMENT OF THE CASE..... 3

REASONS FOR GRANTING THE WRIT..... 13

1. Is it a denial of due process of law when an Equity Court trial judge shows favoritism to the Plaintiff and her attorney and a Cross-claim Defendant that causes severe prejudice to the other Defendant? 14

2. Is it a denial of due process of law for an Equity Court trial judge to allow the Plaintiff's attorney to ambush a co-trustee Defendant during trial with surprise complaints not noticed to the co-trustee in the Plaintiff's pleadings? 16

3. Is it a denial of due process of law for a trial judge to evaluate a co-trustee's performance by the judge's "personal opinions" when his "opinions" conflict greatly with published trust administrations standards? 23

4. Is it a denial of due process of law for Appellate Court's "motion panel" to issue orders to a pro se Appellant that are extremely vague and impossible to understand with any reasonable degree of clarity and specificity? 25

5. Is it a denial of due process of law when Appellate Court's "motion panel" orders Appellant to stop reporting actions of the trial attorneys and trial judge that severely prejudiced case against Defendant? 26

6. Is it a denial of constitutionally protected civil rights when an Appellate Court's "motion panel" strikes entirely a pro se Appellant's appeal brief and then strikes two essential arguments from the amended brief because the arguments contained complaints about unfair and unethical actions of the trial attorneys and trial judge? 27

7. Is it a denial of due process of law for Appellate Court's "decision panel" to ignore controlling law regarding appropriate due process standards?..... 28

8. Is it a denial of due process of law for Appellate Court's "decision panel" to ignore applicable published legal standards regarding trust administration procedures?..... 28

CONCLUSION 30

INDEX TO APPENDICES

Appendix	Subject	Page
A	Appellate Court's Orders	1
	A1 Per Curiam Affirmed decision	
	A2 Order denying Rehearing	
	A3 Order striking Initial Brief	
	A4 Order striking Points III, IV	
	A5 Order deny Clarification	
B	Trial Court's Orders	6
	B1 Final Judgment	
	B2 Order deny attorney fees/costs	
	B3 Order denying Rehearing	
	B4 Order denying Stay of Execution	
C	U.S. Constitution	17
	Article 4, Section 1, 2	
	Amendment 1	
	Amendment 14, Section 1	
D	Florida Statutes (Trust Admin.)	18
	Chapter 737 (selected sections)	
	Chapter 738 (selected sections)	
E	Trial transcript statements	21
F	Parol Evidence References	40
G	Due Process Citations	42
	G1 U.S. Supreme Court Cases	
	G2 Florida Cases	

PAGE ONE OF TWO PAGES

INDEX TO APPENDICES

Appendix	Subject	Page
H	Trust Administration Citations	47
I	Marion Beacham's Reports (selected paragraphs)	51
	"I" 1 August 22, 1989 Affidavit	
	"I" 1 October 20, 1989 Affidavit	
J	Leona's Deposition (partial)	63
K	Criminal Statutes	67
	K1 18 U.S.C. 241	
	K2 Fla. Stat. 839.13	

TABLE OF AUTHORITIES CITED IN PETITION

DUE PROCESS CASES — Page

Armstrong v. Manzo,
380 U.S. 545, 85 S.Ct. 1187 (1965)..... 28

D'Alemberte v. Anderson,
349 So.2d 164 (Fla. 1977) 28

TABLE OF AUTHORITIES CITED IN APPENDICES

DUE PROCESS CASES — Appendix

Armstrong v. Manzo,
380 U.S. 545, 85 S.Ct. 1187,
14L.Ed.2d 62 (1965)..... 42
44

Carey v. Piphus,
435 U.S. 247, 98 S.Ct. 1042,
55 L.Ed.2d 252 (1978) 42

Coe v. Armour Fertilizer Works,
237 U.S. 413, 35 S.Ct. 625,
59 L.E. 1027 (1915)..... 44

Dodson v. Persell,
390 So. 2d 704 (Fla. 1980)..... 45

Goodrich v. Ferris,
214 U.S. 71, 29 S.Ct. 580, 53 L.Ed. 914..... 44

Grannis v. Ordean,
234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363 42,
43,44

Griffin V. Griffin,
463 So.2d 569 (Fla. 1st DCA 1985) 45

Hart Properties, Inc. v. Slack,
159 So. 2d 236 (Fla. 1963) 46

Joint Anti-Fascist Committee v. McGrath,
341 U.S. 123, 71 S.Ct. 624,
95 L.Ed. 817 (1951) 43

Lamb v Jones,
202 So. 2d 810, (Fla. 3rd. DCA 1967) 46

Marshall v. Jerrico, Inc.,
446 U.S. 238, 100 S.Ct. 1610,
64 L.Ed. 2d 182, (1980)..... 42

Milliken v. Meyer,
311 U.S. 457, 61 S.Ct. 339,
85 L.Ed. 278, 132 A.L.R. 1357..... 44

Mullane v. Central Hanover Bank & Trust Co.,
339 U.S. 306, 70 S.Ct. 652 (1950)..... 43

Offutt v. United States,
348 U.S. 11, 75 S.Ct. 11,
99 L.Ed. 11 (1954)..... 43

Peralta v. Heights Medical Center, Inc.,
108 S.Ct. 896 (1988)..... 44

Priest v. Board of Trustees
of Town of Las Vegas,
232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751..... 44

Roller v. Holly,
176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 520..... 44

Surf Drugs, Inc. v. Vermette,
236 So.2d 108 (Fla. 1980) 45

TABLE OF AUTHORITIES CITED IN APPENDICES

PAROL EVIDENCE CASES — Appendix

Commissioner of Internal Revenue v. McIlvaine,
78 F.2d 787 (7th Cir. 1935)..... 41

Elkins, v Super-Cold Southwest Co.,
Tex.Civ.App., 157 S.W. 2d 946, 947..... 40

Estate of Craft v. Commissioner, (Federal)
68 T.C. 249 (1977) 40

Federal Deposit Ins. Corp. v. First Mortgage
76 Wis.2D 151, 250 N.W.2d 362..... 40

First National Bank of Florida v. Moffett,
479 So.2d 312 (Fla. 5th DCA 1985)..... 41

Helvering v. McIlvaine,
296 U.S. 488, 56 S.Ct. 332,
80 L., Ed. 345 (1936)..... 41

Iles v. Iles,
29 So.2d 21 (1947)..... 41

In re Huxtable,
2 Ch. 793 [1902] *England*..... 41

Knauer v. Barnett,
360 So.2d 399 (Fla. 1978)..... 41

Petition of United States
on Behalf of Smithsonian Inst.
485 F. Supp. 1222 (D.C. 1980) 41

Rose v. Food Fair Stores, Inc.,
437 Pa. 117, 262 A.2d 851..... 40

TABLE OF AUTHORITIES CITED IN APPENDICES

TRUST ADMINISTRATION CASES	Appendix
Bay Biscayne Co. v. Baile, 73 Fla. 1120, 75 So. 860	47
Comstick v. Bowles (Mass.) 3 N.E. (2d) 817	50
Crabb v. Young, 92 N.Y. 56, 66 et seq	50
In re Weller's Estate, 108 N.E. 306, 267 Ill. 230	49
Massey v. Stout, 4 Del. Ch. 274	50
Murdock v. Elliot, 77 Conn. 247, 256, 58 A. 718	50
Nickels v. Philips, 18 Fla. 732	50
Preston v. Wilcox, 38 Mich. 578, 582	50
Shirk et al. v. Walker, 10 NE(2d) 192 (Mass. 1937)	49
Smith v. Heyward, 115 S.C. 145, 164, 105 S.E. 275	50
Smith v. Jones, 162 So. 496 (Fla. 1935)	47
Waller v. Hosford, 152 Iowa 176, 130 N.W. 1093	50
Wilson v. Smoot, 186 Ky. 194, 216 S.W. 129	50
Wylie v. Bushnell, 277 Ill. 484, 505, 115 N.E. 618	50

STATUTES: CITATIONS IN PETITION

Pages

Florida:

Trust Administration
Chapters 737, 738 (selections) see pages 3,15, 23,29

Criminal Statute: 839.13..... 21
22

United States Code

Title 18, Section 241.....pages 21, 28

United States Constitution,

Art. IV, Section 1, 2 10

Amendments 1 and 14 .....see pages 2,3,6,27

OTHER: CITATIONS IN **APPENDIX F**

The Law of Trusts (Scott), Fourth Ed.:

Section 38. The Parol Evidence Rule 38, 40

OTHER: CITATIONS IN **APPENDIX H**

76 Am Jur 2d. Trusts:

Section 523 - 534..... 47

Sections 653 through 659..... 48

Bogert, Trusts and Trustees:

Sections 972, 974..... 47

90 C.J.S. Trusts:

Section 232..... 49

Section 406..... 47

Restatement of the Law, Second, Trusts, 2d.:

Section 242 e..... 47

Sections 178, 244, 245, 246,
and 200 e., 194 a. (2nd para.),
and 167, 251, 253, 254, 254 e., and 258..... 48

The Law of Trusts (Scott), Fourth Ed.:

Section 242.3 Lien for compensation..... 47

Section 246, Liability upon contract..... 48

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To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Lonnie E. Willoughby, Jr., prays that a writ of certiorari issue to review the Per Curiam Affirmed decision rendered by Florida's Fifth District Court of Appeals that ignored and refused to decide the extremely serious due process of law arguments in Petitioner's appeal briefs.

The extremely unfair Per Curiam Affirmed decision rendered by the Florida Appellate Court evaded the issues on appeal and denied all relief requested by the Appellant and denied him any

opportunity to appeal to Florida's Supreme Court, placing the appellate court in the position of Florida's court of last resort.

OPINIONS BELOW

The appeal decision below, dated October 8, 1991, is presented in Appendix A1. Its operative language consists of one phrase, "PER CURIAM AFFIRMED", with no opinion given regarding the legal basis for the decision.

The combined appeal process encompassed two related civil appeals - Final Judgment, dated 10/12/89, and the Circuit Court's Order denying Petitioner attorney fees and costs, dated 4/23/90. The Circuit Court's Final Judgment is shown in Appendix B1; the Circuit Court's Order denying attorney fees and costs is shown in Appendix B2.

JURISDICTION

The Florida Appellate Court's decision was filed October 8, 1991. The Petitioner filed a Motion For Rehearing and then filed a Motion For Extension Of Time that explained the severe hardship circumstances that caused the Motion For Rehearing to arrive two days after the very short 15 days normally allowed for filing for a Rehearing.

Although the Appellant had the flu, lived in South Carolina, and was severely handicapped in his efforts to conduct legal research concerning Florida Law, the court denied Lon Jr's request for a very short extension of time and struck Lon Jr's Motion For Rehearing with a single Order dated 11/6/91. (Appendix A2)

The jurisdiction of this Court is based on 28 U.S.C. 1257 (a) since the decision presented for review is that of the highest Court of Florida in which a decision could be had and the case concerns civil rights guaranteed to the Petitioner by the Constitution of the United States, Amend. 1,14.

CONSTITUTIONAL AND STATUTORY ISSUES INVOLVED

Article 4, Section 1, 2, and Amendments 1, 14 of the United States Constitution as set forth in Appendix C.

This civil litigation was about Florida Trust Administration; therefore, relevant portions of Florida's Trust Administration Statutes, Chapters 737 and 738, are shown in Appendix D. Statute sections will be cited appropriately in the argument, referring to specific statute numbers.

STATEMENT OF THE CASE

NOTE: The symbols used in this petition to identify litigation records are the same symbols that were used in all of Lon Jr's appeal briefs.

Petitioner Lonnie E. Willoughby, Jr. (Lon Jr) is a resident of Greenville County, South Carolina. He is the eldest son (currently age 55) of the Respondent, Leona Willoughby (currently age 76) who is a resident of Putnam County, Florida.

Larry Willoughby, a resident of New Hanover County, North Carolina, is the brother of Lon Jr and they are the only children in the family of Leona and Lonnie E. Willoughby Sr. (Lon Sr).

Lon Sr died on November 22, 1986, leaving an A-B type trust estate that was initiated in January 1983 as a Revocable Inter Vivos Trust. The Grantor, Lon Sr, appointed Lon Jr. and Larry as joint co-trustees for his trust estate. An identical Trust Instrument was initiated simultaneously for Leona and she also appointed Lon Jr and Larry as her two joint co-trustees.

A civil lawsuit was filed on February 24, 1989, in Putnam County, Florida by Leona's legal counsel, Tito Smith, due to a dispute and an impasse between the two co-trustees about the distribution

of the trust estate's "net income" to the income beneficiaries (Leona, Lon Jr, and Larry).

Leona's complaint alleged that Lon Jr had stopped making income distributions to the Plaintiff and had submitted bills to the Trust for his services as Trustee that were totally without merit. The complaint also alleged that Lon Jr had taken the position that he would allow no further income distributions until his trustee fee bills were paid, and that such action constituted mismanagement that warranted removal. Leona asked the court to remove Lon Jr as trustee and review his trustee fee statements to determine whether or not he should be paid anything for his trustee services.

The appeal records show that Lon Jr was unable to locate any "local" Putnam County attorney to represent him in this case during the initial 30 day period allowed for filing an Answer to the Plaintiff's complaint. Lon Jr, in S.C., contacted numerous "local" Palatka, Florida law firms by telephone, but they all insisted on talking to the Plaintiff's attorney (Tito Smith) before they would discuss the case in depth with Lon Jr. After talking with Tito Smith, each attorney summarily declined to discuss representing Lon Jr in the case.

Tito Smith's conversations prevented Lon Jr from obtaining "local" legal counsel to help him file an Answer to Leona's Complaint; therefore, Lon Jr was forced to file an Answer pro se, without any prior legal training or experience. Lon Jr also tried to obtain legal counsel in nearby counties, but each attorney declined involvement in this case because the trial would be held in "Putnam County".

Lon Jr filed a pro se Answer to Leona's complaint denying her complaints, and reported relevant facts regarding the trust estate. Lon Sr's trust estate contained two separate and independent trusts, the Marital Trust and the Family Trust. Although he was a co-trustee of both trusts, Lon Jr could not act independently with regard to the

distribution of "net income". All trust checks required joint co-signatures of both co-trustees.

Lon Jr also explained that he had not personally stopped making "net income" distributions to Leona; she was blaming the wrong co-trustee for the income distribution impasse. Larry caused the impasse when he repeatedly refused to co-sign any trust "net income" distribution checks that were written for properly reduced amounts (amounts that gave due consideration to Lon Jr's trustee management fee expenses). The term "net income" was defined as the remaining amount from gross income after all trust administration expenses had been deducted.

Lon Jr reported that he had provided substantial services for the trust estate in a competent manner, and he believed his trustee fees were reasonable and necessary expenses of trust administration, considering the extremely difficult conditions created by Larry and Leona in their collusive efforts to force Lon Jr to resign as co-trustee so they could control the $640,000.00 trust estate.

Lon Jr also denied that he had stopped all income distributions until his trustee fees were paid; he reported that he had prudently insisted that Larry take those legitimate expenses into consideration when the "net income" distributions were calculated in order to prevent overpaying the beneficiaries. However, Larry had repeatedly refused to deduct those expenses from gross income before writing monthly "net income" checks.

The Answer also reported that Lon Jr had suffered a large loss of personal business income in 1987 and 1988 due to the many extra co-trustee actions required by Larry's irresponsible and extremely uncooperative co-trustee actions and Leona unreasonable actions as beneficiary. Lon Jr believed that he should be fairly compensated for at least a part the time that those actions forced Lon Jr to spend on extra co-trustee duties.

Lon Jr finally obtained "local" Putnam County legal counsel about three months after Leona's complaint was filed (Alan B. Fields, Jr). After reviewing the pleadings and the relevant facts, Mr. Fields assured Lon Jr that Leona had no legitimate case against him, but he recommended that Lon Jr commission a professional trust administration expert to evaluate his co-trustee actions regarding Leona's complaints.

Lon Jr obtained the services of Mr. Marion Beacham, the Senior Trust Officer with NCNB Bank in nearby Greenville, S.C. Mr. Beacham is an attorney, member of the S.C. Bar, and in charge of an 18 employee trust department, one of the largest in the state. He had over 18 years experience as a professional trust officer. Mr. Beacham evaluated Lon Jr's and Larry's individual co-trustee actions in detail. He also participated in a Deposition examination and cross-examination in Greenville, S.C. Mr. Beacham then completed a written, sworn, witnessed, notarized affidavit report of his "trust administration expert" evaluation; he mailed the affidavit report directly to Mr. Fields for use in the upcoming trial. (30 hours of his time at $50.00 per hour = $1,575.00; paid by Lon Jr as co-trustee).

Mr. Beacham's deposition testimony was very complimentary about Lon Jr's co-trustee work, and his affidavit report stated that Lon Jr had done a "super-human" job as co-trustee, but Larry had been an uncooperative co-trustee. (Appendix I 1)

The case went to trial in a non-jury Equity Court on September 6, 1989, with Circuit Court Judge Robert R. Perry presiding. Lon Jr's "local" Putnam County legal counsel, Alan Fields, Jr., had filed a motion on June 6, 1989 requesting permission to amend Lon Jr's pro se pleadings to include Larry as an indispensable party and make other improvements in the interest of justice. Mr. Fields filed amended pleadings on June 22, 1989 and had them served on Larry as a cross-claim Defendant. However, Judge Perry did not allow a

hearing for the amended pleadings, and his actions prevented Lon Jr from obtaining discovery information from Larry prior to trial.

The judge also denied a verbal motion at the beginning of trial, by attorney Alan Fields, that the amended pleadings (that had been filed and served three months earlier) be allowed by the court. Larry had not provided an Answer to Lon Jr's cross-claim pleadings, but Larry was present and willing to submit himself to the jurisdiction of the court. However, Judge Perry denied Mr. Fields' verbal motion although Larry, as co-trustee, was obviously an indispensable party to this cause.

Immediately thereafter, Judge Perry offered to join Larry in the suit by agreement of the parties, rather than by allowing Lon Jr's amended pleadings. Judge Perry's unfair actions forced Lon Jr to agree to join Larry in the suit without benefit of his amended pleadings which contained appropriate cross-claims against Larry. Judge Perry also denied Mr. Fields' motion to introduce Mr. Beacham's affidavit report into evidence although it was the best evidence available regarding the individual actions of the two co-trustees during the income distribution impasse period. Mr. Beacham's affidavit report was the only professional expert evaluation made of the co-trustee's actions.

Although Judge Perry had refused to allow Lon Jr to amend his pleadings months before trial to include an indispensable party and present cross-claims against him, Judge Perry repeatedly allowed Tito Smith to make de facto amendments to the Plaintiff's pleadings during trial to bring in surprise complex technical complaints against Lon Jr.

The judge allowed Tito Smith to introduce testimony about several surprise "ambush" complaints against the Defendant (Lon Jr) over four separate objections by defense attorney, Alan Fields. Mr. Fields repeatedly objected to testimony being introduced about complaints outside the

pleadings, but Judge Perry overruled all objections. Judge Perry failed to act in a fair and impartial manner toward the Defendant prior to trial, and he repeatedly failed to protect the Defendant's right to due process during trial. (Appendix C,G)

Throughout the all day trial, Tito Smith introduced much testimony about three surprise complex technical complaints against Lon Jr, and dominated the trial with this testimony. Mr. Smith then brought in two additional surprise complaints against Lon Jr during the closing argument although no testimony or evidential documents had been introduced to support those new surprise complaints. Mr. Smith self-serving statements about the surprise complaints were not evidence, and Lon Jr was given no opportunity to defend himself against the two new complaints introduced during Mr. Smith's closing argument.

Tito Smith introduced a total of five surprise complaints during trial that had not been properly noticed to the Defendant in the Plaintiff's pleadings. Argument Issue 2 will identify the surprise complaints and expose Mr. Smith's fraud scheme.

The trial judge cooperated with Tito Smith throughout the day long trial and allowed him to ruthlessly "ambush" Lon Jr with surprise complaints. The judge prevented Lon Jr from having a fair opportunity to defend himself against the two complaints in Leona's pleadings because the judge allowed the trial to be dominated by testimony about the surprise "ambush" complaints. The trial transcript shows that Judge Perry did not want to hear Lon Jr's defense testimony about the two complaints noticed to him in Leona's pleadings.

Judge Perry's extremely unfair actions toward Lon Jr caused Fundamental Error and fatally flawed the initial trial and all further litigation in this cause. Defense counsel's objections during trial and other relevant trial statements are shown in Appendix E.

The trial transcript was completed about five weeks after trial, and Lon Jr immediately commissioned Mr. Marion Beacham, as a trust administration expert, to review the 267 page transcript and evaluate the surprise "ambush" technical complaints raised at trial against Lon Jr.

The final judgment was filed on October 19, 1989, six weeks after trial, and it contained four of the five surprise "ambush" complaints as the basis for removing Lon Jr as co-trustee. The judgment also used those surprise complaints as the basis for making drastic modifications to the Trust Instruments directives regarding the way the trust income and principal assets would be distributed between the two independent trusts. Those actions were extreme violations of the Parol Evidence Rule regarding Express Trusts (written Instruments).

Appendix F citations show that the written Trust Instrument is the best evidence of the Grantor's intent and purposes. Defense counsel raised proper objections at trial regarding Parol Evidence requirements. (Appendix E: 1T. 167)

Mr. Beacham promptly completed a detailed sworn, witnessed, notarized affidavit report of his findings regarding the technical trust issues raised at trial. His report concluded that CPA Stanley's testimony at trial was clearly erroneous regarding trust issues; he did not understand the fine details of estate planning using multiple trusts. The report also confirmed that the estate planning had been done properly, and the Federal Form 706 Estate Tax Report had properly allocated assets between the two trusts involved, contrary to CPA Stanley's surprise testimony at trial that he now believed that he had calculated the Form 706 Report improperly in August 1987. Mr. Beacham's report also confirmed that Lon Jr's testimony at trial about those surprise technical complaints had been correct (testimony required by judge over objections).

Mr. Beacham's "trust expert" report cost Lon Jr $1,475.00, and he paid for this with his personal funds, as he had done with the previous report. Lon Jr had no access to trust funds except through Larry as co-trustee. Lon Jr expected to be reimbursed from trust funds at the end of this litigation.

Lon Jr timely filed a Motion For Rehearing pro se, providing his own sworn, witnessed, notarized affidavit documentary report that showed all of the surprise "ambush" complaints were false complaints. He included Mr. Beacham's "trust expert" affidavit report to further substantiate that Lon Jr had been ambushed at trial with false testimony and statements about false surprise complaints. Lon Jr requested a hearing regarding the surprise "ambush" complaints.

Judge Perry issued a sarcastic order containing false information that denied Lon Jr's Motion For Rehearing. (Appendix B3) His order was a violation of U.S. Constitution, Article IV, Section 1,2. He did not honor sworn, witnessed, notarized affidavits from another state as he should have done (public acts, records). As a non-resident co-trustee in S.C., Lon Jr had no other way of presenting documentary reports to a Florida Court. The evidential documents provided as exhibits with Lon Jr's motion were from the trusts' official records.

Judge Perry ignored Lon Jr's affidavit report and the evidential documents attached that proved that the trial contained false and perjured testimony and false attorney statements about the surprise "ambush" complaints. Lon Jr's documents were the best evidence available anywhere to prove the truth about the "ambush" complaints. However, Judge Perry denied Lon Jr a fair chance to defend himself.

Lon Jr then filed a detailed Motion To Stay The Execution (pro se) and also filed a Notice of Appeal. Judge Perry denied Lon Jr's Motion To Stay The Execution with another sarcastic order containing false statements. (Appendix B4)

After careful analysis of the 267 page trial transcript, Lon Jr could see clearly that Alan Fields had deliberately betrayed him at trial in numerous ways, and his actions helped Tito Smith and Judge Perry collusively "ambush" Lon Jr at trial with surprise complaints not noticed properly to Lon Jr.

Mr. Fields, with 23 years experience as a trial attorney, allowed his client (Lon Jr) to be brutally and ruthlessly ambushed at trial all day long when all he had to do to stop that unethical and illegal scheme was simply object on the basis of prejudice.

In addition, Mr. Fields refused to introduce most of Lon Jr's best evidential documents at trial; he failed to cross examine CPA Stanley about his obviously false testimony about Leona's gross income and needs for additional income from the trust estate (as Lon Jr requested during trial); Mr. Fields failed to use Leona's Deposition testimony and Interrogatories to impeach her false and perjured testimony at trial on several important issues; and he failed to allow Lon Jr any opportunity to testify in his own behalf about the CPA's false and perjured testimony about Leona's gross income during 1987, 1988. Lon Jr was ambushed at trial with false surprise complaints, and his defense attorney cooperated with that unfair, unethical, and illegal scheme.

As a result of Alan Fields' betrayal of his client at trial and again after trial with post trial actions, Lon Jr refused to pay Mr. Fields the remaining amount billed for his services. Alan Fields then filed a Notice of Intent to Claim Charging Lien to try to obtain funds from the trust estate to pay the remaining balance on his legal "services".

While Lon Jr was involved in the appeal process for the Final Judgment, additional hearings were held regarding Alan Fields' charging lien, and a brief trial was held on April 17, 1990. Judge Perry also took an adversary position to Lon Jr throughout that trial. At the end of the trial he

issued a verbal opinion and again used Tito Smith's previous ambush complaint of "conflict of interest" to deny Lon Jr any reimbursement for his legal expenses as co-trustee during this litigation. Judge Perry also ruled that Alan Fields' charging lien was inappropriate for this situation; he recommended that Alan Fields file a separate lawsuit against Lon Jr to collect his attorney fees. The judge was openly hostile and adversarial toward Lon Jr during trial as he presented his own case pro se.

Lon Jr filed a pro se Notice Of Appeal regarding Judge Perry's Order denying Lon Jr any reimbursement from trust assets for his co-trustee litigation expenses. The judge's written order was different from the judgment rendered at trial; he now claimed Lon Jr's legal defense provided no benefit to the Trust. (Order shown in Appendix B2)

The two appeals were later combined by agreement of the parties. After a protracted appeal process that included numerous motions and briefs from both parties, a single PER CURIAM AFFIRMED decision was rendered on October 8, 1991. The decision provided no opinion on any of the numerous argument issues on appeal; thus, no insight was provided for the legal basis used for the decision. (Appendix A1)

Lon Jr filed a Motion for Rehearing and a belated Motion for Extension of Time explaining that he had been sick with the flu and had been seriously handicapped by being unable to conduct expedient and efficient legal research regarding Florida Law in a South Carolina Law Library (which did not have West's Florida Statutes Annotated or West's Florida Digest series). The court summarily denied both motions. (Appendix A2)

The Per Curiam Affirmed decision denied Lon Jr any opportunity to appeal to the Florida Supreme Court; he was left with no recourse except to file this petition in a determined effort to expose the fraud and injustice in this litigation.

REASONS FOR GRANTING THE WRIT

The argument issues presented herein will show that the Trial Court and the Appellate Court ignored U.S. Supreme Court case law and Florida Supreme Court case law regarding due process.

Lon Jr's appeal brief arguments reported several serious due process violations and also proved that the trial court's Final Judgment directly conflicted with Florida's Trust Administration Statutes, conflicted with the Grantor's Trust Instrument's directives, conflicted with Florida Supreme Court case law, conflicted with Florida Appellate Court case law, conflicted with other State's Supreme Court case law, and conflicted with several leading, nationally recognized trust administration legal reference standards.

In spite of all of that, the Florida Appellate Court grossly abused its judicial authority and discretion and issued a Per Curiam Affirmed decision (without opinion) that evaded the due process violations and other legal issues on appeal. The decision denied the Petitioner the opportunity to appeal to Florida's Supreme Court.

This petition exposes extreme abuse of judicial authority and discretion by two Florida Courts; extensive research shows that such abusive actions appear to be routine in many Florida Courts. Thus, it is tremendously important that this case be reviewed by the U.S. Supreme Court.

This complex litigation is a classic example of how trustees and other litigants can be subjected to abusive judicial tyranny in Equity Courts throughout America. Lon Jr's extensive case law research found that many Florida judges ignored due process of law standards during Equity Court actions.

A U.S. Supreme Court decision is badly needed to prohibit due process abuse by trial attorneys and trial judges during Equity Court actions.

1. *It is a denial of due process of law when an Equity Court trial judge shows favoritism to the Plaintiff and her attorney and a cross-claim Defendant that causes severe prejudice to the other Defendant.*

The entire Statement Of The Case is included herein by reference; the detailed chronological order of those events will not be duplicated again.

As related previously, and as reported in great detail in Lon Jr's appeal briefs for the second appeal, Judge Robert Perry was extremely unfair toward Defendant Lon Jr. Judge Perry personally assisted Tito Smith in numerous ways to prevent Lon Jr from having a fair and impartial trial that was restricted to the two complaints properly noticed to Lon Jr in Leona's pleadings.

Judge Perry personally prevented Lon Jr from being able to obtain discovery information about Larry as an indispensable cross-claim Defendant. He would not allow a hearing for Lon Jr's amended pleadings which were properly filed and served on Larry by the sheriff's office in New Hanover County, N.C., about three months before the case went to trial.

Lon Jr's appeal briefs show that Judge Perry repeatedly allowed testimony about false surprise "ambush" complaints, over objections, that destroyed the fairness and impartiality of the trial. Judge Perry allowed the one day trial to be totally dominated by testimony about surprise "ambush" issues raised by Tito Smith. Only a small part of the trial testimony was about the two complaints in Leona's pleadings, which is what the trial was supposed to be about. Argument Issue 2 will identify the five surprise "ambush" complaints.

The appeal records show that Lon Jr's competent estate planning efforts helped his family avoid over $150,000.00 in federal estate taxes and avoid over $50,000.00 in probate expenses on the

joint estates of his parents and provided other important benefits to the family.

The appeal records also showed that Lon Jr had served without any trustee fees until 1988 when he charged an annual fee of $2,400.00 for his 1987 co-trustee services due to the extensive time and extremely stressful efforts required to deal with the collusive efforts of Larry and Leona trying to force Lon Jr out of his co-trustee position. (1R. 690)

Larry, as co-trustee, acted in an irresponsible manner for several months before Lon Jr finally started charging for his co-trustee time, as had been authorized by the Trust Instrument at all times. The records also show that Lon Jr suffered a loss of income in 1987 in excess of $50,000.00 due to the problems created by Larry and Leona for Lon Jr, as co-trustee. After Larry obstinately refused to pay Lon Jr's $2,400.00 trustee management fee, Lon Jr started billing the trust for all extra time required of him by either Larry or Leona other than the routine monthly trustee duties. (1R. 36 -67)

By the time the case went to trial on September 6, 1989, Lon Jr's trustee fee statements had accumulated to more than $15,000.00. However, Larry had refused to pay Lon Jr for any of those fees from trust funds, and Lon Jr had received no compensation at the time of trial. (1R. 679)

Although the evidence at trial clearly proved that Lon Jr had been an exceptionally competent and responsible co-trustee, the trial judge ruled against him as if he was personally responsible for Larry's extremely foolish and irresponsible actions. The record proved that Lon Jr had repeatedly tried to get Larry to cooperate with him and conduct the trust estate affairs in an efficient and cost effective manner; however, the trial judge punished Lon Jr for Larry's extremely poor performance as co-trustee. That unfair action was a serious violation of Florida Statute 737.404. (Appendix D)

Lon Jr's appeal briefs reported Judge Perry's extremely unfair actions that showed favoritism to the Plaintiff, her attorney, and Larry, and showed how the trial judge's unfair actions severely prejudiced the case against Lon Jr. The appeal briefs also proved that Judge Perry repeatedly denied Lon Jr due process of law; the judge totally ignored U.S. Supreme Court case law, Florida Supreme Court case law, and other Florida legal standards regarding due process. (Appendix G)

2. *It is a denial of due process of law for an Equity Court trial judge to allow the Plaintiff's attorney to ambush a co-trustee Defendant during trial with surprise complaints not noticed to the co-trustee in Plaintiff's pleadings.*

The Statement Of The Case and Argument Issue 1 are included herein by reference.

As shown in Statement of the Case, page 4, there were only two complaints in Leona's pleadings against Lon Jr. During pretrial deposition testimony, more than 12 weeks after the complaint was filed, Leona admitted that she had no complaint against Lon Jr, stating that Lon Jr had not mismanaged the trust. She simply wanted more income from the trust estate. (Appendix J)

About 12 weeks after that deposition, during trial, without any prior notice to Lon Jr, Leona's legal counsel introduced five additional complaints against Lon Jr alleging that he had made all sorts of gross errors in trust management and had preventing Leona from receiving the proper amount of income from the trust estate. This was a blatantly fraudulent effort to win at trial with false "ambush" complaints what Tito Smith knew he could not win in an ethical, professional, and responsible manner.

Tito Smith immediately attacked Lon Jr on direct examination, as the first witness called, with surprise issues not included in the pleadings.

Mr. Smith dominated the all day trial with his surprise "ambush" complaints. The two complaints in Leona's pleadings received little consideration.

1) Mr. Smith alleged that Lon Jr had not interpreted the Trust Instruments properly regarding the asset distributions between the Marital Trust and the Family Trust (the 27% v. 34% surprise issue).

Mr. Beacham's post trial "trust expert" analysis reviewed the entire 267 page trial transcript. Mr. Beacham's affidavit report exposed this as a false complaint, and he used a detailed mathematical calculation model of the dollar amounts involved to prove his analysis. Mr. Beacham also proved that Lon Jr's understanding of the Second Amendment and the CPA's original understanding were both correct. However, the CPA's trial testimony was in error when he conveniently "changed his mind" at trial to help his client (Leona).

2) Tito Smith also claimed that the asset value transferred to Lon Sr's trust was not the right value; alleging that the value of Lon Sr's trust estate and Leona's trust estate should have been equal in value. This was the " 50% : 50%" surprise issue that Lon Jr knew nothing about prior to trial.

Tito Smith totally ignored the <u>fact</u> that Leona had fully agreed to the asset transfers to Lon Sr's trust estate; she signed all of the property transfer documents in December 1984 and/or February 1985 (almost five years before trial). Lon Jr sent Tito Smith copies of the property transfer documents on August 3, 1988. There was no legitimate dispute in this matter, but Mr. Smith still ambushed Lon Jr with this false surprise complaint at trial.

Mr. Beacham's trial transcript affidavit report showed that his extensive review of the trust records over a period of years found no indication that anyone had ever presented the 50% : 50% split of assets allegation to Lon Jr in any of the trust's

detailed records. That false surprise complaint was another malicious attempt by Tito Smith, Leona, Larry, and CPA Stanley to ambush Lon Jr at trial.

3) Tito Smith also alleged that the Second Amendment, dated 12/12/84, had provided no estate tax benefits to the Willoughby family and was simply a deceptive action on Lon Jr's part to take advantage of his parents for his own financial benefit. Mr. Smith also had CPA Stanley testify about the federal estate tax issue regarding the two trust arrangement (A-B Trusts). The CPA's "non-expert" testimony was grossly in error, as any estate planner could easily and quickly determine.

Mr. Marion Beacham's post trial analysis of that issue found the CPA's testimony was wrong. Mr. Beacham proved in his report that the Second Amendment actions had indeed saved the Willoughby family an enormous amount of federal estate taxes, and had legitimately reduced those taxes to zero. He proved that Lon Jr had done an outstanding job of estate planning for his parents.

4) Late in the trial, Tito Smith raised another false "ambush" complaint. He claimed that Lon Jr had unilaterally decided how much value to place in the Marital Trust and had placed 27% of the net trust estate value in that trust when it should have been 34%. (1T. 167: Appendix E, pages 25)

That was a maliciously false complaint; the Marital Trust asset value was determined by CPA Stanley when he completed the Form 706 Estate Tax Return for Lon Sr's estate (8/1987). The CPA lied when he testified that Lon Jr told him how to make that distribution. The Trust Instrument's Second Amendment clearly specified how that distribution was to be made, and the CPA used the Second Amendment's instructions to make those calculations. The CPA certainly had nothing to gain by not following the amendment's instructions, and it would have been professional malpractice for him to not comply with those instructions.

Mr. Marion Beacham's October affidavit report also analyzed that issue in detail; he found that the Second Amendment's instructions had been complied with properly. The CPA's surprise "admission" during trial testimony (that he now believed he had originally made the wrong asset allocations) was proven to be a false admission. Mr. Beacham proved that the CPA's methodology in making the asset value calculations for the Marital Trust was the correct method, and the value assigned to that trust did comply properly with the Second Amendment's distribution directives.

The CPA's false testimony at trial about that surprise issue fit in neatly with the other false testimony given by CPA Stanley on ever issue testified about. The CPA obviously attempted to help his client (Leona) and Tito Smith succeed with their collusive "ambush" of Lon Jr at trial.

5) During his closing argument, Tito Smith also claimed that Lon Jr's co-trustee actions regarding the other issues (ambush complaints) showed that Lon Jr had a serious "conflict of interest" as trustee, and he should therefore be removed. Tito Smith alleged that Lon Jr had done everything for his own advantage and had denied his mother adequate financial income in her retirement years.

Tito Smith ignored the fact that Leona's retirement income would have exceeded $36,000.00 per year, if she had not spent $125,000.00 cash in 1987 for a condominium in Wilmington, N.C. (near Larry). Her retirement income is in the top five percent of all retired people in America.

During trial, CPA Stanley falsely testified that Leona did not have an adequate income in 1987 to meet her expenses and her income in 1988 was only about $20,000.00. Lon Jr knew that the CPA was lying, and he obtained copies of Leona's Form 1040 Federal Tax Reports for 1987 and 1988 after the trial. Those tax reports, completed by CPA Stanley, reported that Leona's gross income in

1987 was $40,230.00 and her income in 1988 was $29,837.00 (no interest income on $125,000.00 spent on unnecessary Condo purchased in 1987).

Lon Jr reported this information to the trial judge with a post trial motion, along with other important documentary information proving that Leona, Larry, and CPA Stanley had all given false testimony at trial. The trial judge ignored the false and perjured testimony and denied Lon Jr's Motion to Stay The Execution. (Appendix B4)

This brief overview of the "ambush complaints" illustrates the brutal and ruthless fraud conducted throughout the shameful trial with the full cooperation of Judge Robert R. Perry.

LON JR had traveled to Palatka (450 miles X 2 = 900 miles) in June 1989 to participate in joint deposition testimony with Leona during the discovery process. None of the surprise complaints were raise during Leona's deposition testimony. She admitted that there had been no mismanagement of the trust by Lon Jr; her only complaint was that she wanted more income from the trust estate. Her monthly income distribution checks had been reduced due to her pro-rata share of the "reserve funds" set up to cover litigation expenses and Lon Jr's disputed trustee fees. (Appendix J)

If the surprise complaints were true, why were they not included in Leona's pleadings in February 1989, or brought forth in her Deposition testimony in June 1989? All of the surprise issues introduced at trial were about actions that occurred between December 1984 and August 1987, but none of them were brought forth during discovery.

Then, three months after this joint deposition, when the trial started, these false surprise complaints were strategically introduced to "ambush" Lon Jr in a reprehensible and unethical way and viciously assassinate his character and integrity. These were complex trust administration

issues that would have required detailed research of trust records, federal estate tax laws, Florida's probate law, and estate planning reference materials to properly prepare for a legal defense at trial. Lon Jr was ambushed with a premeditated conspiracy to deny him a fair trial and due process of law. Those unethical and unprofessional actions constituted a heinous federal crime. (18 U.S.C. 241)

The trial judge's actions forced Lon Jr to testify about surprise issues 1, 2, and 3 (over objections), but Lon Jr was given no opportunity to testify or present any evidence about issues 4 and 5. Complaint issue 5 was not introduced until Mr. Smith's closing argument. (1T. 252) No witness testified that they believed that Lon Jr had a "conflict of interest" as co-trustee, and no valid evidence was presented to prove a "conflict of interest" complaint. That complaint came out of thin air with no testimony and no proof, just Tito Smith's self-serving statements about the other ambush issues during his closing argument. (1T. 247-254, see Appendix E, pages 25,39)

The trial judge was extremely unfair toward Lon Jr, and he allowed Tito Smith to brutally and ruthlessly ambush Lon Jr at trial even though Alan Fields repeatedly objected to testimony about issues outside the pleadings and he objected to "non-expert" testimony by the CPA witness. (Appendix E: 1T. 41, 111, 162, 163, 166, 167)

The Final Judgment shows that ambush issues 1, 2, 3, 4 and 5 were used to unethically and illegally justify Lon Jr's removal as co-trustee, and also used to justify major changes to the Trust Instruments' "distribution of assets" instructions. Those changes were extreme violations of the Parol Evidence Rule (Appendix F) although objections were made at trial. (1T. 167, Appendix E, page 25)

Lon Jr's appeal brief proved that extrinsic evidence cannot legally be used to modify a clearly worded Trust Instrument. The Trust Instrument is

the best evidence of the Grantor's intent and his purposes. The judge used verbal self-serving statements at trial, five years after the Trust's Second Amendment, about surprise "ambush" complaints not noticed to Lon Jr before trial to justify making major modifications to Lon Sr's Trust Instruments. Those extremely abusive actions severely violated Lon Sr's trust estate and violated Lon Jr's position as co-trustee in a tyrannical manner. This was Reversible Error!

A Florida Equity Court trial judge has a specific duty to act in a fair and impartial manner toward all litigants and insure that the trial is conducted in a fair manner, respecting each litigant's constitutionally protected civil rights, as guaranteed by Florida's Constitution, Article 1, Section 9, and as guaranteed by the U.S. Constitution, Amendment 14. Judge Perry totally ignored due process standards and acted in an abusive manner toward Lon Jr, repeatedly denying him due process of law. (Appendix G - legal citations).

LON JR was a co-trustee of both the Marital Trust and the Family Trust, in addition to being a remainderman beneficiary of the Marital Trust and a primary beneficiary of the Family Trust. Therefore, to remove Lon Jr as co-trustee under the conditions described herein was a clear denial of liberty and property interest without due process of law. That was Fundamental Error!

Such an "ambush" of a co-trustee at a non-jury trial makes a terrible mockery of the concepts of fairness, impartiality, due process of law, truth, and justice. It demonstrates that trustees can easily be subjected to despotic, abusive judicial tyranny.

Even the extremely biased and unfair trial judge recognized some of Lon Jr's competent co-trustee actions and work, and the Final Judgment awarded Lon Jr $8,000.00 for his co-trustee fees. That amount was grossly inadequate compensation

for Lon Jr's extensive co-trustee management of this $640,000.00 complex trust estate for 1987, 1988, and 1989 due to the very serious co-trustee and beneficiary problems that Lon Jr had to cope with. However, the $8,000.00 award did indicate that even this extremely unfair judge could not bring himself to deny Lon Jr any compensation for his capable and responsible co-trustee work.

To prove the fraudulent intent in Tito Smith's surprise complaints "ambush" scheme, it is important to understand that relevant trust records documents had been provided to Mr. Smith one year in advance of trial. Lon Jr had voluntarily mailed copies of 33 relevant trust records documents to Mr. Smith on September 3, 1988, six months before Leona's complaint was filed. Those trust records, and additional information made available to Mr. Smith before trial, proved convincingly that Lon Jr had been an exceptionally competent and responsible co-trustee who had served the trust estate faithfully for 78 months. Leona clearly had no legitimate complaint against Lon Jr, but Tito Smith still carried out his "ambush" scheme.

3. *It is a denial of due process for a trial judge to evaluate a co-trustee's performance by the trial judge's "personal opinions" when his "opinions" conflict greatly with published trust administrations standards.*

Judge Perry repeatedly failed to be a fair and impartial finder of fact and his erroneous decisions proved that he was not sufficiently competent in complex trust administration law to adjudicate this case in a responsible manner. He did not even follow basic due process of law standards.

Throughout the trial, the trial attorneys avoided references to Florida's trust administration statutes that related to the two complaints filed in Leona's pleadings. Why? Because Lon Jr's disputed co-trustee actions were firmly supported by the statutes. See 737.302; 737.402 (s)(y)(z); 737.404; 738.02; and 738.13 (1)(2) in Appendix D.

Judge Perry used his own "opinions", rather than using the Trust Instruments instructions and Florida's statutory law and/or other nationally recognized trust administration law as a proper legal basis for evaluating Lon Jr's trustee actions. No trustee should ever be subjected to such abusive and unreasonable judicial tyranny.

D'Alemberte v. Anderson, 349 So.2d 164 (Fla. 1977) is a Florida Supreme Court decision on point with this argument.

> Due process will not tolerate a situation which forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning.

Lon Jr's appeal briefs proved that Judge Perry's opinions were opposite to well established trust administration legal standards. One would have to turn trust administration law standards upside down and inside out to find any agreement with Judge Perry's biased personal "opinions". Appendix H1 cites relevant legal standards that prove that Lon Jr's co-trustee actions were prudent.

Lon Jr's appeal briefs proved that Judge Perry ignored the Trust Instruments" directives, ignored relevant statutory law, ignored relevant trust administration standards, and ignored the most authoritative evidential documents and testimony presented at trial and in post trial motions. Judge Perry made the case come out the way he wanted it to come out, irrespective of the controlling legal standards involved or the validity of Lon Jr's testimony and evidential documents.

The appeal records also prove that Judge Perry gave no fair and impartial consideration to Lon Jr's testimony and evidential documents, and he gave no responsible consideration to Marion Beacham's professional trust expert deposition testimony and his two sworn, witnessed, notarized affidavit reports. Mr. Beacham provided the only

authoritative "trust expert" evidence in the trial other than Lon Jr's own expert testimony.

Judge Perry's Final Judgment contained blatantly false statements regarding the trust estate and Lon Jr's knowledge level about estate planning and trust administration. (Appendix. B1) That fraudulent situation was reported in detail in Lon Jr's Amended Initial Brief, pages 38-42 (second appeal). The Appellate Court's "motion panel" did not like Lon Jr's detailed exposure of the obviously false statements in the Final Judgment nor his exposure of the "ambush" complaints fraud scheme. (F.S. 839.13) The Court struck Lon Jr's Amended Initial Brief entirely because it exposed unethical collusive acts by the trial judge and the two trial attorneys that denied Lon Jr due process of law.

4. *It is a denial of due process of law for Appellate Court's "motion panel" to issue orders to a pro se Appellant that are extremely vague and impossible to understand with any reasonable degree of clarity and specificity.*

Appendix A3 and A4 each show the content of an order issued by the Appellate Court to Lon Jr that was extremely vague. The writer of those orders made no reasonable effort to make the orders clear and understandable to "men of common intelligence". Thus, the orders were unconstitutionally vague according to the standards established by controlling Florida case law.

D'Alemberte v. Anderson, 349 So.2d 164 (Fla. 1977) is a Florida Supreme Court decision on point with this argument. (quoted in argument 3).

The Court's Order (dated 9/28/90) struck Lon Jr's Amended Initial Brief entirely, but it did not specify any part of the 49 page brief that failed to comply with appellate rules, and it did not specify which rules were violated. How could any reasonable person expect anyone to understand and comply with such an extremely vague order?

The Order dated 12/5/90 did not clearly identify whether it was referring to the Appellee's Motion To Strike Points III and IV or Lon Jr's appeal brief argument issues III and IV. This was an extremely confusing order to send to a non-attorney pro se litigant. It would have been very easy to write the order to state its purpose in unambiguous terms.

The Court's order denied Lon Jr the right to report with candor on appeal how the lower court trial judge had severely prejudiced the case against Lon Jr by allowing unfair and unethical actions during the initial trial.

Lon Jr filed a Motion For Clarification that requested additional information about the Court's order and specified in detail why the order appeared to violate several of Lon Jr's constitutionally protected civil rights. The Appellate Court responded by denying the motion; the court refused to provide any clarification of its extremely vague order. (Appendix A5)

Very serious due process error occurred when the Appellate Court ignored well established minimum standards for clarity of orders and then failed to administer Florida's laws fairly and impartially toward Lon Jr as a pro se Appellant.

5. *It is a denial of due process of law when Appellate Court's "motion panel" orders Appellant to stop reporting actions of the trial attorneys and trial judge that severely prejudiced the case against Defendant.*

Appendix A4 contains the Appellate Court's Order (dated 12/5/90) which demanded that Lon Jr cease all personal attacks against the trial judge and the two trial attorneys. Lon Jr's Amended Initial Brief made it very clear that those three Officers Of The Court had severely prejudiced the case against Lon Jr collusively with their unfair and unethical actions.

The Sanction Order showed that the Court was not really interested in the truth about the case below. The Court was determined to prevent Lon Jr from exposing unfair, unethical and criminal actions in his appeal brief. The Court's Order denied Lon Jr his constitutionally protected civil rights of free speech, right to present grievances to a government agency, right of equal access to the court, and right to due process during appeal. The Court's sanction order was clearly unconstitutional because it denied Lon Jr civil rights protected by the U.S. Constitution, Amend. 1, 14. (Appendix C)

The Appellate Court had a duty to provide fair and impartial consideration of Lon Jr's appeal brief argument and also administer fairly state and federal statutory law and case law relative to this appeal. However, the "motion panel" tried to cover-up the unethical and illegal acts committed below by denying Lon Jr a fair opportunity to report with candor to the court how those acts had severely prejudiced the case against him. The Court acted in a despotic bureaucratic manner toward Lon Jr.

6. *It is a denial of constitutionally protected civil rights when Appellate Court's "motion panel" strikes entirely a pro se Appellant's appeal brief and then strikes two essential arguments from the amended brief because the arguments contained complaints about unfair and unethical actions of the trial attorneys and trial judge.*

Appendix A3 shows the contents of the Appellate Court's Order (dated 9/28/90) which struck entirely Lon Jr's Amended Initial Brief for the second appeal because it reported unfair and unethical collusive actions in the lower court, by the trial judge and the two trial attorneys, that severely prejudiced the case against Lon Jr.

Appendix A4 shows the Court's Order (dated 12/5/90) which struck Argument Issues III and IV from Lon Jr's Initial Brief (Second Amendment).

The two arguments stricken specifically reported the trial judge's personal involvement in an unfair, unethical, and criminal conspiracy to deny Lon Jr his constitutionally protected civil rights. The Court's unfair Order struck from the Initial Brief (second trial) Lon Jr's detailed report of the unfair, unethical, and criminal actions taken by the trial judge that severely prejudiced the case against Lon Jr. (Appendix K: 18 U.S.C. 241, Fla. Stat. 839.13)

7. *It is a denial of due process of law for Appellate Court's "decision panel" to ignore controlling law regarding appropriate due process standards.*

All of Lon Jr's appeal briefs reported due process errors in the trial court and provided hundreds of references to the appeal records to prove that such errors had indeed occurred; however, the Appellate Court's "decision panel" ignored the controlling case law cited in Lon Jr's appeal briefs and issued a Per Curiam Affirmed decision (without opinion). Lon Jr cited several U.S. Supreme Court cases regarding due process standards. (Appendix G1) (Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187 (1965) showed that a litigant must be granted a new trial when due process errors prejudice the case against him.

Lon Jr's appeal briefs also cited several Florida decisions that prohibit unfair "ambush" tactics during trial, but the Court ignored those citations also, grossly abusing the Court's judicial authority and discretion. (Appendix G2)

8. *It is a denial of due process of law for the Appellate Court's "decision panel" to ignore applicable published legal standards regarding trust administration procedures.*

Leona's pleadings alleged that Lon Jr had stopped her monthly trust income payments and that action constituted mismanagement sufficient to justify his removal as co-trustee. However, trust

administration legal reference standards show that Leona and her attorney did not adequately understand trust administration law regarding that issue.

Appendix H1 citations prove that a trustee is authorized to withhold all "net" income distributions from the income beneficiaries until his trustee compensation fees are paid. This long established legal standard proves that Lon Jr's disputed co-trustee action was prudent and proper, rather than being an irresponsible breach of trust as Judge Perry erroneously reported in the Final Judgment. Florida Statute 737.402 (s) shows that the trustee has a lien on trust assets against the beneficiary when the trust owes money to trustee; 738.13 (2) allows withholding some income from distribution to regularize the distributions, as Lon Jr's disputed actions proposed be done. (Appendix D)

In addition, Lon Jr's Answer (1R. 36-67) and trial testimony and appeal briefs all showed that Leona's complaint was in error. Lon Jr had not refused to make net income payments to Leona; he prudently insisted that Larry take the trustee fees into consideration when the monthly "net" income distribution checks for beneficiaries were calculated so the beneficiaries would not be overpaid. However, Larry adamantly refused to comply with Lon Jr's responsible and prudent request; Larry's obstinate and irresponsible actions are what kept Leona, Lon Jr, and Larry from receiving any trust income distributions for a ten month period.

There was no legitimate reason to remove Lon Jr as co-trustee of his father's trust estate. The records proved that he had been an exemplary co-trustee for more than six years, and his appeal briefs proved that his trustee actions were prudent and reasonable and were made in good faith. Lon Jr's appeal briefs proved that Leona's filed complaint was not a valid reason for removing him as co-trustee. The Trial Court made grievous errors, but the Appellate Court ignored all of them.

CONCLUSION

Lon Jr has shown herein that the Circuit Court's trial judge placed himself in an adversary position to the Defendant throughout the lower court's litigation process and failed to act in a fair and impartial manner as "finder of fact" and grossly abused his judicial authority and discretion.

The Appellate Court's tribunal also placed itself in an adversary position to Lon Jr and ignored the extremely prejudicial actions below and ignored controlling legal standards relative to this case. The appeal process became a farce and a bureaucratic sham. It proved that the Appellate Court was incapable of being fair and impartial when members of the "brotherhood" were involved in unfair, unethical, and criminal acts.

Appellate Court judges must be required to act fairly and impartially toward all litigants, respecting and protecting their constitutionally guaranteed civil rights; if that requires them to recognize and admit unfair, unethical, and criminal acts of Officers of the Court below, so be it. Truth and justice must be the overriding issue on appeal, not the protection of unethical members of the brotherhood. Justice demands reversal of this case!

Petitioner respectively moves this Court to grant its Writ of Certiorari for the review and reversal of the decisions below, and order the Court to restore Lon Sr's trust estate and Lon Jr and Larry to the positions held before the fraudulent trial.

Respectfully submitted,

Lonnie E. Willoughby, Jr.
Acting pro se

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INDEX TO APPENDICES

Appendix	Subject	Page
A	Appellate Court's Orders	1
	A1 Per Curiam Affirmed decision	
	A2 Order denying Rehearing	
	A3 Order striking Initial Brief	
	A4 Order striking Points III, IV	
	A5 Order deny Clarification	
B	Trial Court's Orders	6
	B1 Final Judgment	
	B2 Order deny attorney fees/costs	
	B3 Order denying Rehearing	
	B4 Order denying Stay of Execution	
C	U.S. Constitution	17
	Article 4, Section 1, 2	
	Amendment 1	
	Amendment 14, Section 1	
D	Florida Statutes (Trust Admin.)	18
	Chapter 737 (selected sections)	
	Chapter 738 (selected sections)	
E	Trial transcript statements	21
F	Parol Evidence References	40
G	Due Process Citations	42
	G1 U.S. Supreme Court Cases	
	G2 Florida Cases	

PAGE ONE OF TWO PAGES

INDEX TO APPENDICES

Appendix	Subject	Page
H	Trust Administration Citations	47
I	Marion Beacham's Reports (selected paragraphs)	51
	"I" 1 August 22, 1989 Affidavit	
	"I" 1 October 20, 1989 Affidavit	
J	Leona's Deposition (partial)	63
K	Criminal Statutes	67
	K1 18 U.S.C. 241	
	K2 Fla. Stat. 839.13	

Appendix A1

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA, FIFTH DISTRICT
JULY TERM 1991

LONNIE E. WILLOUGHBY, JR.,

Appellant,

v.

CASE NOS.
89-2541;
90-1056

LEONA WILLOUGHBY

Appellee.

_____/

Decision filed October 8, 1991

Appeal from the Circuit Court
for Putnam County,
Robert R. Perry, Judge.

Lonnie e. Willoughby, Jr., Mauldin,
S.C., pro se.

Tito S. Smith, Palatka, for
Appellee.

PER CURIAM.

AFFIRMED.

GOSHORN, C.J.,
DAUKSCH AND SHARP, W., J.J., concur.

Appendix A2

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

LONNIE E. WILLOUGHBY, JR.,

Appellant,

v.

CASE NOS. 89-2541; 90-1056

LEONA WILLOUGHBY

Appellee.

_____/

Date: November 6, 1991

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION FOR EXTENSION OF TIME, filed October 30, 1991, is denied. Accordingly, it is

ORDERED tht Appellant's untimely MOTION FOR REHEARING, filed October 25, 1991, and Appellant's untimely and unauthorized AMENDED MOTION FOR REHEARING, filed October 28, 1991, are striken.

FRANK J. HABERSHAW, CLERK

cc: Lonnie E. Willoughby, Jr.
Leona Willoughby

Appendix A3

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

LONNIE E. WILLOUGHBY, JR.,

Appellant,

v.

CASE NOS.
89-2541;
90-1056

LEONA WILLOUGHBY

Appellee.

_____/

DATE: September 28, 1990

BY ORDER OF THE COURT:

ORDERED that Appellee's MOTION TO STRIKE INITIAL BRIEFS OF APPELLANT, filed September 10, 1990, is granted. Appellant is granted twenty days from the date hereof to file and serve a second amended initial brief that complies with the appellate rules.

FRANK J. HABERSHAW, CLERK

cc: Tito S. Smith, Esq.
Lonnie E. Willoughby, Jr.
Alan B. Fields, Jr., Esq.

Appendix A4

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

LONNIE E. WILLOUGHBY, JR.,

Appellant,

v.

CASE NOS. 89-2541; 90-1056

LEONA WILLOUGHBY

Appellee.

_____/

DATE: December 5, 1990

BY ORDER OF THE COURT:

ORDERED that appellee's motion to strike with prejudice appellant's second amended initial brief in Case No. 90-1056 is granted as to Points III and IV because of improper appellate argument. Appellee's motion to dismiss appeal and for an award of attorney's fees is denied pursuant to this courts' order of July 25, 1990 consolidating Case Nos. 89-2541 and 90-1056. Appellant is hereby ordered to cease all personal attacks against the trial judge, opposing counsel and his own trial attorney in this cause.

FRANK J. HABERSHAW CLERK

cc: Tito S. Smith, Esq.
Lonnie E. Willoughby, Jr.
Alan B. Fields, Jr., Esq.

Appendix A5

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

LONNIE E. WILLOUGHBY, JR.,

Appellant,

v.

CASE NOS.
89-2541;
90-1056

LEONA WILLOUGHBY

Appellee.

_____/

DATE: JANUARY 3, 1991

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION FOR CLARIFICATION OF COURT'S ORDER, filed December 19, 1990, is denied.

FRANK J. HABERSHAW, CLERK

cc: Tito S. Smith, Esq.
Lonnie E. Willougby, Jr.

Appendix B1

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR PUTNAM COUNTY, FLORIDA.

Case No. 89-5224-CA-M

LEONA WILLOUGHBY,

Plaintiff,

vs.

LONNIE E. WILLOUGHBY, JR., as Trustee of the LONNIE E. WILLOUGHBY, SR. TRUST AGREEMENT DATED JANUARY 1, 1983,

Defendant.

FINAL JUDGMENT

THIS MATTER having come on to be tried before the Court and the Court having considered the testimony of the witnesses together with their demeanor and attitudes toward one another and the Court having further reviewed all of the depositions, pleadings, exhibits and evidence, makes the following findings:

a. That the Court has jurisdiction of both the subject matter and the parties to this cause.

b. That although both Plaintiff and Defendant had filed several motions addressing the pleadings of the other, none of these motions were called for hearing until the day of trial and this cause had been continued previously to allow the pleadings to be clarified; certain of these motions were moot, and all of the party litigants want the case tried and concluded.

c. That the Plaintiff, LEONA WILLOUGHBY, and her deceased Husband, LONNIE E. WILLOUGHBY, SR., had through their joint efforts, accumulated a joint estate that gave rise to a concern by them for estate tax consequences. It was their intent to divide their jointly held estate so that each held fifty percent and it was the Settlor's (LONNIE E. WILLOUGHBY, SR.) intent in creating the Trust dated January 1, 1983, and amended December 12, 1984, to create a marital trust and a family trust so that the Settlor's widow, the Plaintiff herein, and his two sons each received one-third of his separate estate. The amendment specifically provides for the Marital Trust to receive thirty-four percent and the Family Trust the balance of sixty-six percent of the total trust assets. The intent of the Decedent and his Widow, the Plaintiff herein, was never accomplished, however, in that the estates were never equalized, the bulk of the jointly held estate being placed in the Decedent's Trust, and as result of the Defendant's improper interpretation of the Amendment to the Trust, the Plaintiff has only received twenty-seven (27%) percent of the Trust Income since her Husband's death.

d. That although the Defendant, LONNIE E. WILLOUGHBY, JR., believes that he is extraordinarily knowledgeable in the areas of trust administration, estate taxes and probate, he represents the classic example of a little knowledge on a subject being a dangerous thing. His attitude, demeanor and presentation clearly demonstrate an uncompromising individual who has interpreted the Trust and exercised his discretionary determinations in a fashion that is most beneficial to himself.

e. Both the Defendant and his Co-Trustee, LARRY M. WILLOUGHBY, as vested remaindermen of the Marital Trust with significant discretion as to distributions of principal from the Marital Trust to the Plaintiff, have a conflict of interest in making such determinations.

f. The Amendment to the Trust dated December 12, 1984, which was proposed, drafted and prepared by the Defendant, specifically directs the Trustees to make non-discretionary distributions of all income in the Marital Trust to the Plaintiff, and the Co-Trustee failed for approximately one year or until the Plaintiff initiated this litigation to make such distributions. Such actions by the Trustees constituted abusive and arbitrary mismanagement of the Trust as well as a breach of their fiduciary responsibilities to the Trust and the Plaintiff as an income beneficiary.

g. That the Defendant is entitled to reasonable compensation for services as Trustee, but the amounts set forth in the invoices submitted by the Defendant to the Trust are unwarranted and outrageous in that the vast majority of the Defendant's time, as billed, did not involve matters relevant to the Trust, but rather, addressed his personal relationship with his Brother and Mother. This Court further finds that for the services necessary from the Trustee, a fee of $250.00 per month from January 1987 through August 1989, or a total of $8,000.00 is more than generous. The Cross-Defendant, Co-Trustee, LARRY M. WILLOUGHBY, has requested no fees.

h. That the Defendant's testimony and evidence as to damages against the Trust and his Co-Trustee are so remote, conjectural and speculative that the Court can give them no credence.

IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

1. That all of the Motions, both Plaintiff's and Defendant's, called for hearing on the day of trial be and they are hereby denied.

2. That the Co-Trustees, LONNIE E. WILLOUGHBY, JR. and LARRY M. WILLOUGHBY, be and they are hereby removed as

Trustees of the LONNIE E. WILLOUGHBY SR. TRUST.

3. That the Trust shall pay from its principal the sum of $8,000.00 to LONNIE E. WILLOUGHBY, JR. for his services as Co-Trustee.

4. That LONNIE J. STANLEY, CPA of 3000 Crill Avenue, Palatka, Florida, 32177, is hereby appointed Successor Trustee and upon his submitting a surety bond conditioned upon his proper performance as Trustee in the sum of $100,000.00, and said bond being approved by this Court he shall assume the duties of Trustee. The premium for said bond shall be a trust expense.

5. That all financial institutions holding accounts for this Trust are hereby notified of this change in Trustees and are directed to alter their accounts accordingly.

6. That the Trustee shall alter all accountings to reflect a division of trust ownership so that the Marital Trust contains thirty-four percent of the total assets and the Family Trust contains the balance with distributions made accordingly. Additionally, the Trustee shall calculate and pay to the Plaintiff from the Trust Principal seven (7%) of Trust Income since the Settlor's death.

7. That on the Defendant's Counter-Claim for damages against the Trust and Cross-Claim against his Brother, LARRY M. WILLOUGHBY, the Defendant, LONNIE E. WILLOUGHBY, JR., shall take nothing and the Counter-Defendant and Cross-Defendant, shall go hence without day.

8. This Court retains jurisdiction of this cause to determine what, if any, attorney's fees should be paid by the Trust.

DONE AND ORDERED in Chambers, Putnam County Courthouse, Palatka, Florida, this 12th day of October, 1989.

Robert R. Perry
Circuit Judge

Copies to: Tito S. Smith, Esquire
Alan B. Fields, Jr., Esquire

Jill F. Gale
Judicial Assistant

Appendix B2

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR PUTNAM COUNTY, FLORIDA.

Case No. 89-5224-CA-M

LEONA WILLOUGHBY,

Plaintiff,

vs.

LONNIE E. WILLOUGHBY, JR., as Trustee of the LONNIE E. WILLOUGHBY, SR. TRUST AGREEMENT DATED JANUARY 1, 1983,

Defendant.

ORDER

THIS MATTER having come on to be heard by the Court on the Motion for Attorney's Fees filed by Dowda & Fields, Chartered, seeking to enforce a charging lien against the assets of the Lonnie E. Willoughby, Sr. Trust, and the Court having heard the testimony and having reviewed the evidence presented by the parties, and it not appearing to the Court that the legal defense of the Defendant, Lonnie E. Willoughby, Jr., in this litigation was of any benefit to the Trust and the Court

being further and fully advised in the primises, it is

ORDERED AND ADJUDGED that the Motion for Attorney's Fees to be awarded from the Trust be and the same is hereby denied without prejudice to the filing of a separate action, if necessary, to collect fees from the Defendant, individually.

DONE AND ORDERED in Chambers, Putnam County Courthouse, Palatka, Florida, this 23 day of April, 1990.

ROBERT R. PERRY
Circuit Judge

Copies to: Tito S. Smith, Esquire
Alan B. Fields, Jr., Esquire
Lonnie E. Willoughby, Jr.

JILL F. GALE
Judicial Assistant

Appendix B3

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR PUTNAM COUNTY, FLORIDA.

Case No. 89-5224-CA-M

LEONA WILLOUGHBY,

Plaintiff,

vs.

LONNIE E. WILLOUGHBY, JR., as Trustee of the LONNIE E. WILLOUGHBY, SR. TRUST AGREEMENT DATED JANUARY 1, 1983,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR REHEARING

THIS CAUSE coming before this Court upon the Defendant's Motion for Rehearing and the Court having considered the Motion and the attachments thereto consisting of 86 pages and upon the Defendant's Motion For Leave To Change Counsel of Record and Defense Counsel's Motion For Leave To Withdraw and the Court having considered the Motions, and Court being otherwise fully advised in the premises, finds as follows:

The Defendant's Motion for Rehearing brings no new matters cognizable by the Court which merit a rehearing in this case. The Defendant's Motion for Rehearing and its attachments demonstrates as do Defendant's prior pleadings, that the Defendant has no grasp of the relevant scope of the inquiry here. It again in a rehash of the Defendant's position in this case of his view of

himself as a dutiful, obedient and prudent son, confronted by an obstructionist brother and a mother who wishes to spend her own money. The evidence in this case belies this and the record will speak for itself. It is therefore,

ORDERED AND ADJUDGED:

That the Defendant's Motion for Rehearing be and the same is hereby denied. All aspects of the Final Judgment are hereby confirmed. No evidentiary hearing is necessary or appropriate in this case.

That the Defendant's Motion for Leave to Change Counsel or Record and the Defense Counsel's Motion for Leave to Withdraw be and the same is hereby granted. All future pleadings in this case shall be directed to this Defendant at his mailing address; Post Office Box 127, Mauldin, South Carolina 29662.

DONE AND ORDERED in Chambers at Palatka, Putnam County, Florida, this 7th day of November, 1989.

ROBERT R. PERRY
CIRCUIT JUDGE

COPIES TO:

Lonnie E. Willoughby
Tito S. Smith, Esq.
Alan B. Fields, Esq.

JILL F. GALE
JUDICIAL ASSISTANT

Appendix B4

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR PUTNAM COUNTY, FLORIDA.

Case No. 89-5224-CA-M

LEONA WILLOUGHBY,

Plaintiff,

vs.

LONNIE E. WILLOUGHBY, JR., as Trustee of the LONNIE E. WILLOUGHBY, SR. TRUST AGREEMENT DATED JANUARY 1, 1983,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO STAY THE EXECUTION

THIS CAUSE having come before this Court on the Defendant, Lonnie E. Willoughby, Jr's Motion To Stay the Execution and the Court having reviewed the Motion and being completely familiar in the premises, it is

ORDERED AND ADJUDGED:

That the Defendant, Lonnie E. Willoughby, Jr's Motion to Stay the Execution be and the same is hereby denied. The Defendant's Motion again

demonstrates his proclivity for extensive justification of his own actions, but present no appropriate legal grounds for a stay of this Court's judgment.

DONE AND ORDERED in Chambers at Palatka, Putnam County, Florida, this 3rd day of January 1990.

ROBERT R. PERRY
CIRCUIT JUDGE

COPIES TO:

Lonnie E. Willoughby, Jr.
Tito S. Smith, Esq.

Appendix C

U.S. CONSTITUTION

Article IV

RELATIONS OF STATES

Section 1. Full Faith and Credit

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. Privileges and Immunities of Citizens

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

AMENDMENTS

1ST Amendment: Freedom of Religion, Speech, Press, Assembly, and Petition

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

14TH Amendment: Rights of Citizens

Section 1. *** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix D

FLORIDA STATUTORY LAW

737.302 Trustee's standard of care and performance. - Except as otherwise provided by the trust instrument, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent trustee dealing with the property of another. If the trustee has special skills, or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

737.402 Powers of trustee conferred by this part. -

(1) From the time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform every act that a prudent trustee would perform for the purposes of the trust, without court authorization, including, but not limited to, the powers specified in subsection (2).

(2) Unless otherwise provided in the trust instrument, a trustee has the power:

(a) To collect, hold, and retain trust assets received from settlor until disposition of the assets should be made. The assets may be retained even though they include an asset in which the trustee is personally interested.

(s) To Borrow money, to be repaid from trust assets or otherwise, and to advance money for the protection of the trust and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances, with any interest, the trustee has a lien on the trust assets as against the beneficiary.

(u) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the

collection, care, administration, and protection of the trust.

(y) To employ persons, including attorneys, auditor, investment advisor, or agents, even if they are the trustee or associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

(z) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties.

(aa) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the trustee.

737.404 Powers exercisable by joint trustees;

(1) Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise, and a dissenting trustee is not liable for the consequences of an act in which he joins at the direction of the majority of the trustees if he expressed his dissent in writing to any of his cotrustees at or before the time of joinder.

(2) If two or more trustees are appointed to perform a trust and any of them is unable or refuses to accept the appointment or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(3) This section does not excuse a cotrustee from liability for failure either to participate in the

administration of the trust or to attempt to prevent a breach of trust.

738.02 Duty of trustee for receipts and expenditures. -

(1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen.

738.13 Charges against income and principal. -

(1) The following charges shall be made against income:

(d) Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise.

(2) If charges against income are of unusual amount, the trustee may charge them over a reasonable period of time, by means of reserves or other reasonable means, and withhold from distribution sufficient sums to regularize distributions.

Appendix E

TRIAL TRANSCRIPT (FIRST TRIAL 9/6/89) SELECTED SECTIONS

1T. 41: Questions by Tito Smith, answers by Lon Jr

A: Would you repeat the question. please?

Q: Certainly, The assets belonging to your dad that were in this trust, placed into two separate trusts, a family trust and a marital trust. The income from the marital trust being paid to your mother together with the right to invade the corpus of that trust.

A: Yes.

Q: The income off of the family trust paid to Mama as well, but with no right to invade that corpus whatsoever, only a lifetime right to income.

A: And to answer the question, would that have avoided the estate taxes?

Q: Um-hum.

A: And the answer to that is yes, it would have avoided the estate taxes.

Q: Could you tell me why we decided to draw it in this fashion so that Mama doesn't get the income, you and your brother get the income.

A: Well, there were several reasons.

MR. FIELDS: Your Honor, I don't know where this line of questioning is going. Are we trying to uphold the trust or are we challenging the trust instrument itself? I understand the allegations are that Mr. Willoughby is mismanaging the trust. It sounds to me like this line of questioning is going behind, challenging the enactment of the trust.

THE COURT: Go ahead.

MR. SMITH: We're not trying to break the trust, but we're coming to a point in a moment that I think will lead to a mismanagement area.

THE COURT: Well, Mr. Fields, let's see where this leads us.

MR. FIELDS: All right, sir.

(Note: the next ten pages (1T. 42-51) are about the estate planning techniques used in the "Second Amendment" to the Trust Instrument.

1T. 111: Questions - Tito Smith, Answers - Leona

MR. FIELDS: Your Honor, may I again object. I don't know what we're going into, if we're challenging the trust or if Mrs. Willoughby wants to set aside the trust, or if she's trying to say Mr. Willoughby is not functioning properly under the trust.

THE WITNESS: I'm not doing either of those, sir.

MR. FIELDS: Seems to me they're challenging the trust.

MR. SMITH: Your Honor, we're not challenging the trust. The point I'm trying -- what I'm trying to do is portray a portrait for the Court of the actions of the defendant in this case, how he has orchestrated things and what he has done and what it's led to.

THE COURT: I'm aware to the point. The objection is overruled. If there was one with a legal basis. I didn't hear one.

MR. FIELDS: Immaterial, irrelevant to the pleadings and to the accusations here today.

1T. 162-163: Questions by Tito Smith, Answers are by CPA Lonnie Stanley (CPA who did the Form 706 Estate Tax Report for Lon Sr's estate and also does Leona's federal tax returns, since 1985).

Q: Based upon, again, your representation of the Willoughbys and your understanding of the trust, why was it, did you believe, that this trust was executed? What was the objective of the trust?

MR. FIELDS: Your Honor, I object. I don't think this witness has any expertise to explain the trust. I think the trust speaks for itself.

MR. SMITH: The trust speaks for itself. He certainly can say what he understood based upon representations by his clients, their objective was with the trust.

MR. FIELDS: One, I think would be the dead man's statute and as to Mrs. Willoughby, I don't know. But I think we'd have to see what those representations were.

THE COURT: I'll overrule the objection. But don't give him the dead man's testimony. Don't tell me what -- the dead man's statute doesn't apply to him. He's not interested in this.

MR. SMITH: That's correct, Your Honor.

THE COURT: Overrule the objection. Go ahead.

MR. FIELDS: May I inquire for voir dire? If we're going to give an expert opinion, I suppose.

THE COURT: I don't know that he's giving an expert opinion.

MR. SMITH: I haven't asked that he be qualified as an expert.

MR. FIELDS: May I just ask a couple of questions?

THE COURT: If he's not giving an expert opinion, I don't think -- and he hasn't been submitted to me as an expert yet.

MR. FIELDS: But I object to any testimony of this witness relating to this trust based upon what people told him. Number one, it would be self-serving from Mrs. Willoughby's standpoint. Number two, it he's going to explain what the trust was meant to be, he is not qualified, he's incompetent to do that. Number three, there has been no predicate to show that he had any knowledge of the trust before it was executed as to what was their intent.

THE COURT: Objections is overruled. Go ahead.

BY MR. SMITH:

Q: What was your understanding of why your clients executed the trust?

A: My understanding was that they wanted to avoid probate and estate taxes.

Q: All right, sir. Did the trust accomplish this?

A: The trust accomplished that, yes, sir.

Q: It accomplished the avoidance of probate?

A: Yes, sir.

Q: Did it accomplish the avoidance of estate taxes?

A: Yes, sir, there were no estate taxes paid.

1T. 166-168, Questions by Tito Smith, Answers are by CPA Lonnie Stanley

Q: When you prepared the 706, who retained you to file that document?

A: Lonnie Willoughby, Jr., and Mrs. Willoughby. (Note error: it was Larry and Leona)

Q: And in doing so, I understand that you had an opportunity again to review all of the trust documents and you were familiar with this document, the amendment to the trust?

A: Yes, sir.

Q: In preparing the 706, how much of what percentage was allocated to Mrs. Willoughby of the trusts assets?

A: On the 706, the marital trust was allocated at approximately 27% of the entire asset value.

Q: All right, sir. Let me direct your attention to the paragraph on the face page of that amendment to the trust where it recites that a trustee shall insure that at least 34% shall go to their trust, or words to that effect.

A: I believe it says in apportioning to the marital and family trust specific assets previously valued for estate tax purposes, the trustee shall assure that my husband receives at least 34%. This is Leona Willoughby's trust.

Q: I'm sorry. I'm showing you Mrs. Willoughby's.

MR. FIELDS: Your Honor, may I object again. We're getting outside of the pleadings in this case. We're attempting to, one, to enforce the terms of the trust, and that we now again seem to be attacking the trust instrument itself.

MR. SMITH: Your Honor, we're not attacking -- excuse me. Go ahead.

MR. FIELDS: I don't know where we're going. We're trying to get something that's certainly outside of the pleadings and I don't know where -- I think I know where it's intended to go, but that's certainly not in the pleadings of what I understood we would be here for. Now we're starting to attack the instrument and how it was planned or what it

does. I think it's been pretty well universally testified to so far, that's what was done and that was the intent of the settlor.

MR. SMITH: I don't agree with this --

THE COURT: The objection boils down to materiality to these issues, is that it?

MR. FIELDS: Yes, sir, materiality and relevancy, and also as to the parole evidence rule. We're attempting to avoid this instrument by explaining it with people who are not a party to it.

MR. SMITH: Your Honor, what we're trying to do is show mismanagement on the part of this gentleman as a co-trustee. And part of that mismanagement is that he decided unilaterally it's going to be 27% and not 34%, regardless of what Daddy said and regardless of what the instrument that he drafted said. And I'd like for this CPA to testify to that.

THE COURT: Objection is over ruled. I can see the materiality and the relevance.

BY MR. SMITH:

Q: Why, Mr. Stanley, did you in the 706 reflect 27% or allocate 27% of the trust assets to Mrs. Willoughby as opposed to 34% that this document recites?

A: When we prepared the 706 or in the preparation of it and my conversations with Lonnie Willoughby, Jr., we allocated that based on what he had explained to me was the interpretation of this paragraph in the trust. Which, what it ended up being is that we had taken 34% of the net value, the gross estate minus the estate expenses, and then from that we subtracted one-half of the jointly held property that Mr. Lonnie Willoughby, Sr., and Leona Willoughby owned. And that ended up arriving at that 27%.

Q: All right, sir. Have you had an opportunity subsequent to that time to review this?

A: Yes, sir, I have. I believe that we erred in that calculation. The trust calls for 34%, and down here at the bottom, the part I think that had created the confusion, was a reference to Florida Statutes 732.207, 732.208. I have discussed this with another attorney looking for an interpretation

of what do those chapters really mean. And my understanding after that conversation was that the 30% referred to in those chapters is subject to assets that are solely in the name of the individual, consequently we should not have reduced the 34% by one-half of those assets.

Q: All right, sir. And based upon your understanding of the law and the language in that trust now, what percentage of the income from the trust should she be receiving?

A: She should be receiving 34%.

Q: And she should have been receiving it since its inception?

A: Yes, sir, I believe she should have been receiving it since its inception.

Q: And to your knowledge what has she received?

A: To my knowledge, she has received income based upon 27%.

1T. 171: Questions by Tito Smith, answers by CPA

Q. Do you still continue to represent Mrs. Willoughby as a CPA?

A Yes, sir, I do.

Q: And you've had discussions with her relative to this trust?

A: Yes, sir, I have.

Q: And you're doing her income tax returns now?

A: Yes, sir, I am.

Q: Can you testify from your experience having prepared those returns how her income has been affected since her husband's death?

A: Well, the first return that I prepared for Mrs. Willoughby was a joint return for 1985, and on the joint return her income was approximately $75,000. That was prior to Mr. Willoughby's death. Since that return, the income has diminished each year. Her 1988 return was approximately $20,000 in income.

Q: And that included the income from the trust?

A: Yes, sir , it did.

Q: Have you had the opportunity to -- of course, you've done her income tax return. Have you had an opportunity to prepare financial statements for her? Have you ever done that?

A: No, sir, I've never done that. You know, I'm somewhat familiar with her assets, but we've never prepared balance sheets and compared those.

Q: Have you prepared anything like a P & L? Anything showing what her income in and what her outgo is?

A: The only things that I prepared are her tax returns in that regard.

Q: In doing that, preparing those tax returns though you review, do you not, the expenditures?

A: Yes, We have reviewed her expenditures.

Q: Based upon that review, does it appear to you as though she is expending more monies than she's receiving?

A: Depends on which year we refer to. In 1987 she expended more money than what she received . In 1988, I would have to -- I'd have to refer back to it. There was period there where she did not receive as much income, and during that time she definitely was expending more money. Now she probably is very close to a break even proposition until we get into 1989 and now her income is down again, and I think that she probably is expending more money than her income. She probably is eating into her assets, yes, sir.

Q: And did you do any calculations at her request to determine what it would take in the form of income from the trust to maintain her on an even keel?

A: Yes, sir, I did.

Q: And what was that figure?

A: Approximately $2,000 a month.

1T. 181: CPA Lonnie Stanley still on witness stand.

THE COURT: Mr. Stanley, before you go, two things. If I understand correctly, the tax consequences, that is, the savings of the estate taxes

would have been effective upon the first 1983 trust. That is the savings of taxes in both his and her estate?
THE WITNESS: Right. The trust, in essence, by simply passing on the first death over to beneficiaries being the sons would have accomplished the same thing by reducing Mrs. Willoughby's estate below the unified credit. In other words, not allowing that to pass over.
THE COURT: So the second trust had no effective tax consequences with regard to the estate tax?
THE WITNESS: I think that's correct, yes, sir. In regard to the estate taxes.
THE COURT: And it was not necessary to effect -- to have the second trust in order to save all the taxes you're going to save?
THE WITNESS: I believe that's correct, yes, sir.

1T. 185: Plaintiff concludes argument.

THE COURT: Plaintiff rests. Mr. Fields?
MR. FIELDS: May it please the Court. Your Honor, at this time I would like to ask for a dismissal of the complaint based upon the following basis.
Number one, this is, I think agreed upon. This is a spendthrift trust. And based upon the law, as I understand it, that in the spendthrift trust it is set up on the basis that --
THE COURT: Do you agree it's a spendthrift trust?
MR. SMITH: No, Your Honor. He tends to, I don't.
MR. FIELDS: Well sir, I don't have any doubt in my knowledge that this is a spendthrift trust. It quacks, it barks, it does everything like a spendthrift duck barking trust. It. prohibits the individuals from anticipating income, it prohibits the trustees -- I mean the beneficiaries from a creditor attaching. It also prohibits the beneficiary from any say so in its organization or management. It is a trust. It is a spendthrift trust. And based upon the law, as I understand it, in 54 Am. Juris., Trusts, Section 128, removal of trustee, and University of Miami law Review, 540, number 1985, and

Florida Law of Trust by Lowell and Grimsley, Section 4-3, that the beneficiaries may not bring an action to get rid -- to remove the trustee of a spendthrift trust.

****** Now I think we've tried to go beyond everything in this matter as to what happened in this amendment to the trust, but I don't think there is any doubt that that is what the intent of the settlor was. Regardless of everything he's trying to do to attack this trust.

Now in accordance with the Fifth District (Court of Appeals) in Parr versus Cushing, 507 So 2d 1227, it's very specific as to an express trust. And quoting on page 1228, "generally removing a trustee should be predicated upon a clear showing of abuse or wrongdoing in the actual administration of the trust." What we have here has been a difference of opinion between the co-trustees. There is nothing shown as to actual mismanagement of the trust, and I think that Mrs. Willoughby admitted that. Specifically, I know she's done that on the interrogatories.

Under the case of Bacon versus Martin, 518 So.2d 925, a Third DCA case, we relate to the statute that we've been speaking of in the trust administration statute. And that case says that this is a -- the statute is in derogation of the common law, and where the statute does not provide, then you go to what was the intent of the settlor. And the settlor said in this case that remuneration can be paid to the trustee. The settlor had said that the trustee, trustees, whichever, can consider in net income their expenses prior thereto. And what you had here was a question amongst the two trustee, when they started getting along, then one says well, I don't like what you're doing. ********

Now all we've had here so far is attempts to set aside, to vacillate from the trust instrument itself. There is nothing showing that Mr. Willoughby, Lon Willoughby as co-trustee, varied from the provisions of that trust. It gives him discrimination, it gives him discretion, it gives the other trustee. The fact that they won't work together is not the issue. That does not make mismanagement.

Your Honor, the cases that I've cited, I don't think there has been enough evidence to show at this point that Mr. Lon Willoughby has mismanaged this trust.

1T. 191: After Tito Smith's rebuttal of Alan Fields' motion to dismiss.
THE COURT: Motion is denied. Are your ready?
MR. FIELDS: Yes, sir.
MR. Fields called Lon Jr. as his first witness.

1T. 199: Lon Jr. still testifying.

Q: You've heard what Mr. Stanley had to say about the taxable event of the original trust, the amendment?
A: Yes, sir.
Q: No. sir.
Q: Would you please explain?
A: Mr. Lonnie Stanley is totally wrong, and this is one of the great problems in estate planning. It is extremely difficult to find anyone who knows what they're doing. Everybody has got an opinion, but almost nobody has researched it thoroughly enough to be accurate.
Q: Please tell the Judge wherein Mr. Stanley is wrong.
A: Okay, Well, If I understood his testimony, and again, it's difficult to get in his head and understand what he meant to say, but if I understood his testimony, he said that the first trust that my mother and father had would have effected the same tax savings as we had with the amendment. And that's totally wrong.

The first trust my mother and father had would have effected no estate tax savings, if we had just left that trust in effect the way it was in effect prior to us making the second amendment, other than the fact that the amount of cash that had been put into my father's estate would have gotten involved in those trust calculations. But the bottom line of it is, on the original trust everything in my

father's estate would have passed into my mother's estate.

Now Mr. Lonnie Stanley was correct that there would be no estate tax upon my father's death and there would be no probate upon my father's death simply because those cash assets that we had put in the original trust would have passed to my mother under the original trust, through the trust, outside of probate. The other assets that would have been passed outside the trust upon my father's death would have avoided probate simply because they were joint assets and would have passed to my mother as the remainder of the two jointly owned -- joint owners. So we would have avoided the probate upon my father's death in either case.

But that's not the thing that's important. What's important is what do you finally do when everything is accounted for? The final accounting comes when the second of those two joint owners dies. That's when the IRS calls in and wants their money for estate taxes. And that's when the estate would have had to be probated for all assets that were outside the trust, as there are substantial assets outside this trust currently.

So it's not enough to look at it in the beginning stages, you have to look at the final stage to determine the proper estate planning. And in that respect, Mr. Lonnie Stanley's testimony was very misleading, as far as it went.

1T. 212: Lon Jr. testifying.

BY MR. FIELDS:
Q: Mr. Willoughby, in accordance with my request in preparation for today, have you prepared a services report, a synopsis, of your activities relating to this trust and your problem with your co-trustee and the other beneficiary?
A: Yes sir. I tried to prepare what essentially is a brief summary.
Q: Is this the document?
A: Yes sir, it is.

Q: If I can ask you to be , again, brief and summarize this more briefly -- Your Honor, I'd like to have this entered, his summary.
MR. SMITH: It it'll save time by introducing this, that's fine.
THE COURT: Any objection?
MR. SMITH: None, Your Honor.
THE COURT: Mark it.
MR. SMITH: I think it'll save time.
THE COURT: Be number nine.
(THEREUPON, the document was marked as Defendant's Exhibit Number Nine by the Clerk)

BY MR. FIELDS:

Q: Now, Mr. Willoughby, I asked you if you could please be even more brief than that and tell the Court essentially of the problems which faced you and why you considered that it was time that you charged your co-beneficiaries and yourself with the fee and what fees were charged.
THE COURT: Is this included in the summary? Is this included in the summary?
MR. FIELDS: I'm just asking -- I think it is, Your Honor.
THE COURT: Well, if I'm going to read the summary, do I have to listen to this again? Which one do you want me to do?
MR. FIELDS: Read the summary, Your Honor.

BY MR. FIELDS:

Q: Mr. Willoughby -- forget what all is in that -- did you include that in your research into fees charged by trust departments?
A: Is that written in the summary?
Q: Yes.
A: I honestly do not recall. I don't believe it is.
Q: Well, I don't believe it is. Can you please teil us then what if any research you have done in order to ascertain what the corporate trustee in the southeast would charge for the services of managing this trust?

A: Yes sir. In Jacksonville, Florida, I have met with trust officers for Barnett Bank, First Union Bank, First National Bank of Florida, Sun Bank, and I have acquired from NCNB Bank in South Carolina, the fee structure for NCNB Bank of Florida. And I discussed with those four bank trust officers in detail, some of those discussions lasted an hour with just one bank. We went into great detail about what their charges would be under numerous circumstances including management of the Penn Oaks Apartments in DeLand, etc.

Q: Based upon that research, were you able to ascertain what it would cost you and your co-beneficiaries of these trusts for a corporate trustee to manage this trust in lieu of yourself?
A: Yes sir. I can summarize that very briefly. Two banks charge the lowest fees. One of those is Barnett Bank and the other one is First National. Or Florida National. I'd have to look at the records to be sure whether it's First National or Florida National, but in any case, I can tell you what the lowest rate is. The lowest rate is 1% of the gross net asset value of all trust assets.

So if the trusts' gross value is, well say, sixty-five, $650,000, then they charge a 1% fee per year to manage those assets. In other words, that would be $6,500. But because this is a living trust that currently has co-trustees, if they were to begin managing that they charge -- all of those institutions, all five of them, insist on charging what's called an assumption fee and for most of those that is a 1% fee also. So they would charge $6,500 just to start.

Then they charge another $6,500 per year and most of them want this paid on a quarterly basis. Now when I say paid, they automatically take it out of the trust. They don't have to wait and get a check for their services the way I'm still waiting to get a check for mine, for all of my fees. I've never been paid. They automatically take it out up front before the beneficiaries receive anything. And then whatever the net income is after their fees, then the beneficiaries are paid on whatever terms are established in the trust agreement. Whether it be monthly or quarterly.

Q: After you ascertained that you were having sufficient problems, upon what basis did you discuss with your Brother that you thought you should now be paid for your services?
A: Well, I explained to him in my letter, which is dated in April of 1988, that I had had tremendous problems with him, that he had failed to do his duty as a co-trustee even on the small, simple things.
Q: In what way do you think he's failed?
A: Well, at that point in time, I had been working on the trust tax returns for the tax year of 1987. This was in the spring of 1988. And he receives bank records from two banks holding trust accounts. One from Security First Federal and one from First Union.

So as a result of them sending those records to him, and he and signed papers to the effect that they would send those papers to him, and then I received bank records on about seven accounts. He gets record on two, and I get them on seven. But on the two that he received, he also gets the Substitute Form 1099 which shows how much interest income that bank trust accounts has -- had reported to the Internal Revenue Service directly by the bank. Well, whoever does your tax returns needs that form in order to verify how much tax should be reported on that tax return from that account.

He had not sent me both of the 1099's Substitute 1099 Forms, that I needed. He had sent me one of them back in February of 1988. The other one had never come, so I wrote him and asked him to send it to me. I received that form 25 days after I mailed the tax return to him.

In addition to that, he was withholding my own personal checks, beneficiary checks. He had withheld those in December. He withheld them again in January of 1988. And we had had several conversations in that regard.
Q: What explanations did he give you for withholding your beneficiary's checks?
A: He told me that under the terms of the trust he didn't have to pay me one dime unless I needed the money, and that I would get my checks whenever he felt like it.

And I explained to him very calmly that he and I both, as co-trustees, had a responsibility under this trust to distribute all the net income on a monthly basis. And that he was supposed to sign those checks if they were in the right amount, and send them out to me just like he wanted me to sign the checks to Mother. He had no problem with sending the check to Mother, but he didn't want to send me my check because he was being very stubborn and very hard-headed, and he felt like -- that he had the right as a co-trustee to withhold my checks. And I explained to him that's not what the trust says. Both of us have a joint responsibility to distribute those net income checks if they're in the right amount or currently due. But I didn't get my check for a couple of weeks, and finally he decided -- as a matter of fact, I didn't get them for quite some time in December.

So he and I had another conversation in January when he called me, and he insisted at that point in time that I agree to pay off all of the funds that are in the trust, distribute those funds out, and do away with the trust as soon as the Penn Oaks mortgage note was paid.

Now what he was referring to was in the fall of 1987, the people who have the mortgage note on the Penn Oaks wanted to renegotiate with us the 12% interest rate. And we did not agree to lower that rate to 9% like they asked us to do. And so they went outside and tried to find someone else that would give them a second mortgage note at a better interest rate than 12%. And then they were going to pay off that balloon note.

Q: They wanted to discount it?

A: They wanted to discount it, and I had informed them that if they did that, there was to be a $26,000 penalty for paying it off prematurely that I had personally written into the sales contract so that they could not pay it off within the first five years without that penalty. But they could pay it off after five years without penalty. This was within that first five year term.

So I reminded them, you have a penalty here if you want to pay it, but, of course, you've got a

right to pay it off and get someone else to refinance the second mortgage. So all of that was going on, and we were reasonably confident that they were probably going to get financing, and so the Penn oaks mortgage not would be paid off either in the fall of '87 or sometime in '88.

Q: And your co-trustee then wanted to terminate the trust?

A: And in that phone conversation, which is a recorded conversation, which I have a tape of, he insisted that I agree right then and there on the phone that I would agree to distribute all the funds out of the trust as soon as that mortgage note was paid off, and that we would do away with these trusts, and that if I didn't -- and I told him, I said, look, it's not my practice as a businessman to make decisions before they need to be made.

I have a general rule. I make decisions in a timely manner when I think they need to be made. I don't make them weeks, or months, or years before they need to be made. And I said, "I'm not going to agree to do that at this point in time." I said, "We'll make that decision whenever it needs to be made. It does not need to be made today."

He got very adamant with me in that phone conversation, became extremely insulting, and this phone conversation went on for quite some time.

I tried to remain calm and cool and keep bring him back constructively to our responsibility as co-trustees as I had done numerous times in my letters to him, trying to help him maintain a responsible co-trustee position even though he himself wasn't familiar with what was in the trust.

He was quoting things out of the trust off the top of his head that were totally invalid. And he got very heated in the discussion, and he told me that -- he said, "I can't work anything out with you." He said, "You're worse than my Father ever was to talk to," and he went on and on and on.

Q: Was he attempting to do something that was contrary to the terms of the trust?

Q: Yes sir. There was nothing in the trust about paying off that mortgage note, and we'll terminate the trust, and we'll distribute all the income.

These were demands that he was placing on me, totally outside of our responsibilities as co-trustees.
Q: Do you believe that you can maintain the trust in the best interest to all beneficiaries if you would remain the sole trustee?
A: Yes sir. I could maintain this trust very cost-effectively and efficiently if I did not have to contend with my Brother and if we could resolve my Mother's fears and doubts with regard to her income. And I think I can probably do that today in testimony.
Q: You're familiar with the law and you're familiar with the trust?
A: Yes sir. I am very familiar with it.
Q: Have you followed the dictates of them as far as you know?
A: To the best of my knowledge and understanding, I have followed these trust requirements and the Florida trust law, which I have -- as I testified earlier -- I've got copies of the Florida trust laws. And I have followed those as honestly and responsibly as I know how to do as a human being.

It has been a nightmare. It has cost me a ton of money out of my own personal life, but I do it because I understand this. The very first and most important responsibility as trustee is to allow nothing to interfere with him accomplishing his trustee duties.
MR. FIELDS: Thank you. I have nothing further.

1T. 249: Tito Smith's closing argument.

The point, Your Honor, that we're attempting to make is that the amendment drawn by Mr. Willoughby did one thing and one thing only, and that was - it added to his position. I don't believe that there was any tax savings, there was any changes as far as the Internal Revenue Service was concerned by the amendment. The only difference, the only significant difference being that instead of mama drawing the income off of that, those trust funds, now she only draws a percentage of it. A relatively small percentage of it.

Now I recognize the fact that one of the things the plaintiff has to prove in this case is mismanagement. And I think the law on that is relatively clear, and I would like to give the Court a number of cases on the law, some of which Mr. Fields referred to himself. I don't know if the Court wants copies of these or just citations, but I think that what we have to demonstrate is that the trustee has failed to perform or has performed arbitrarily or has mismanaged this trust.

I think that the evidence clearly presents that. It clearly shows that. Particularly in two significant areas. One is that Lon decided when he interpreted the trust provisions that he had drawn upon Dad's death that we weren't going to put 34% into Mom's Marital Trust, we're only going to put 27% in there. And he did it with a rationalization obviously false now that this was saving taxes.

He, for whatever reason, never got the two estates, hers, Mrs. Willoughby's and Mr. Willoughby's equal, 50-50, as they had requested. And I think that if he had done that he would have achieved the settlor's objectives, which was to leave 50% of their joint assets to Mama, and one-third of 50% of those assets to Mama, one-third to each one of his two sons.

Even his expert will testify, and you'll see it when you read his deposition, that in fact 34% is the correct amount. The CPA has testified to that as well.

The other really more major in my mind area of mismanagement is when he decided unilaterally in 1988 after no fees having been charged and after making a statement to his Mom and his Dad to let your sons serve as co-trustees, we're grown men, we'll take care of you, and we won't charge you any fees like a bank would, now in 1988 he's decided that because he hasn't gotten along with his Brother for a while and he hasn't gotten along with his Mama for a while, he's going to start charging fees. He decided this unilaterally, and then he decided on top of that that until his fees are paid, or as he calls them, administrative expenses, then there is not going to be any income distribution.

Well, as a trustee you've got a fiduciary responsibility to your income beneficiary. And I think that he directly affected Mom's income and deprive her of her right to that income for a period of a year. And I think again the Court file reflects that when he made -- finally made that distribution in April of 1989, it was because he just got served with process in this case. If we hadn't instituted this litigation, this stalemate might continue. And who does the stalemate benefit?

It adds to the trust which are ultimately distributed upon Mom's death to the two sons.

I think that's clear, arbitrary mismanagement of the trust. I think what the testimony and the evidence has shown with respect to Lon Willoughby is a man that since he left the FAA has in some fashion or another lived off Mom and Dad.

He came down, he worked with the Penn Oaks Apartments. That's Mom and Dad's apartments. He made a living off of that. He made an income off of that. In addition, he received 30% of the proceeds when that was sold.

And that's continued today. And now at this point in time he's attempting to live off of the trust. The trust has clearly become an obsession with him. If your look at his files, you look at his documents, you listen to his testimony, he does nothing but attempt to be a trustee in this trust, trying to take care of Mama and Brother and himself.

And I think that he's allowed that position to cause him to get into a conflict of interest situation. In other words again, the less money he can put in Mom's pocket, the more money he can put in his own. Now I'm not trying to say that Mr. Lon Willoughby, Jr., is a bad man, I'm just trying to say that that's the facts as we have them today. He's in a conflict of interest situation and I think he ought to be removed as trustee.

Appendix F

PAROL EVIDENCE REFERENCES

Black's Law Dictionary, Sixth Edition:

Parol Evidence Rule. This evidence rule seeks to preserve integrity of written agreements by refusing to permit contracting parties to attempt to alter import of their contract through use of contemporaneous oral declarations. Rose v. Food Fair Stores, Inc., 437 Pa. 117, 262 A.2d 851. Under this rule when the parties to a contract embody their agreement in writing and intend the writing to be the final expression of their agreement, the terms of the writing may not be varied or contradicted by evidence of any prior written or oral agreement in the absence of fraud, duress, or mutual mistake. Federal Deposit Ins. Corp. v. First Mortgage Investors, 76 Wis.2d 151, 250 N.W.2d362,365. But rule does not forbid a resort to parol evidence not inconsistent with the matters stated in the writing. Elkins, v Super-Cold Southwest Co.; Tex.Civ.App., 157 S.W. 2d 946, 947. * * * * * *

This rule is also applicable to wills and trusts.

* * * * * * *

THE LAW OF TRUSTS (Scott), Fourth Edition

Section 38. The Parol Evidence Rule

Second paragraph: Under the parol evidence rule, if the manifestations of intention of the settlor is integrated in a writing, that is, if a written instrument is adopted by him as the complete expression of his intention, extrinsic evidence, in the absence of fraud, duress, mistake, or other ground for reformation or rescission, is not admissible to contradict or vary it. (Federal) Estate of Craft v. Commissioner, 68 T.C. 249 (1977)

Section 164.1. The terms of the trust.

Second paragraph: In determining the terms of the trust, resort is had in the first place to the instrument, if any, under which the trust is created. As to any matter expressly covered by the instrument, the provisions of the instrument, if unambiguous, determine the terms of the trust. In such a case extrinsic evidence in the absence of fraud or mistake is not admissible to vary or add to the terms of the instrument.

England: In re Huxtable, [1902] 2 Ch. 793.

Federal: Commissioner of Internal Revenue v. McIlvaine, 78 F.2d 787 (7th Cir. 1935), affirmed sub nom.; Helvering v. McIlvaine, 296 U.S. 488, 56 S.Ct. 332, 80 L., Ed. 345 (1936); Petition of United States on Behalf of Smithsonian Inst. 485 F. Supp. 1222 (D.C. 1980) (quoting the text)

FLORIDA CASES:

When the terms of an instrument are clear and unambiguous there is no need for the court to construe the instrument. *** intent of settlor should not be determined by isolated words and phrases, but, rather, the instrument as a whole should be considered and testator's general plan interpreted. First National Bank of Florida v. Moffett, 479 So.2d 312 (Fla. 5th DCA 1985)

It is the intention which the settlor expresses in the trust instrument which controls, not that which he might have had in mind when the trust was executed. Iles v. Iles, 29 So.2d 21 (1947)

*** the fact remains that the court was not entitled to rely on extrinsic evidence of the settlors' intent concerning an unambiguous trust instrument.

In construing wills and trusts, the intent of the testator or settlor should prevail and effect given to his wishes. Knauer v. Barnett, 360 So.2d 399 (Fla. 1978)

Appendix G1

DUE PROCESS CITATIONS

U.S. Supreme Court Cases

Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187 (1965); 14L.Ed.2d 62 (1965)

85 S.Ct. 1191 [6] A fundamental requirement of due process is "the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place. His motion should have been granted.

For the reasons stated, the judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

Marshall v. Jerrico, Inc., 446 U.S. 238, 100 S.Ct. 1610, 64 L.Ed. 2d 182, (1980)

100 S.Ct. 1613: The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See *Carey v. Piphus*, 435 U.S. 247, 259-262, 266-267, 98 S.Ct. 1042, 1043, 1050-1052, 1053, 1054, 55 L.Ed.2d 252 (1978) At the same time, it preserves both the appearance and

reality of fairness, "generating the feeling, so important to a popular government, that justice has been done," *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, 71 S.Ct. 624, 649, 95 L.Ed. 817 (1951) Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.

Indeed, "justice must satisfy the appearance of justice.," Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13, 99 L.Ed. 11 (1954)

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652 (1950)

70 S.Ct. 656 [4] **** Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

Page 657 [7] Against this interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is defined by our holding that "The fundamental requisite of due process of law is the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.

Page 657 [8] An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and

afford them an opportunity to present their objections. Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, 132 A.L.R. 1357; Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363. Priest v. Board of Trustees of Town of Las Vegas, 232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751; Roller v. Holly, 176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 520. The notice must be of such nature as reasonably to convey the required information, Grannis v. Ordean, supra, and it must afford a reasonable time for those interested to make their appearance, Roller v. Holly, supra, and cf. Goodrich v. Ferris, 214 U.S. 71, 29 S.Ct. 580, 53 L.Ed. 914.

Peralta v. Heights Medical Center, Inc., 108 S.Ct. 896 (1988)

Page 900: "it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits" Coe v. Armour Fertilizer Works, 237 U.S. 413, 424, 35 S.Ct. 625, 629, 59 L.E. 1027 (1915). As we observed in Armstrong v. Manzo, supra, 380 U.S., at 552, 85 S.Ct., at 1191, only "wip[ing] the slate clean... would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place." The Due Process Clause demands no less in this case.

Appendix G2

DUE PROCESS CITATIONS

Florida Cases

Dodson v. Persell, 390 So. 2d 704 (Fla. 1980) states on page 706, 707 that:

> This court, as most jurisdictions, adopted discovery as part of our procedural rules to improve our system of justice. It is a tool intended (1) to identify at early stages of a proceeding the real issues to be resolved; (2) to provide each party with all available sources of proof as early as possible to facilitate trial preparation; and (3) to abolish the tactical element of surprise in our adversary trial process. In Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla. 1980) we stated that the primary purpose of our rules is to prevent the use of surprise, trickery, bluff and legal gymnastics. Revelation through discovery procedures of the strength and weaknesses of each side before trial encourages settlement of cases and avoids costly litigation. Each side can make an intelligent evaluation of the entire case and may better anticipate the ultimate results.

Griffin V. Griffin,
463 So.2d 569 (Fla. 1st DCA 1985)
(TRUST LITIGATION)

[1] Issues in cause are made solely by pleadings.

[2] Once issues have been fixed by pleadings, they may be changed only by stipulation of the parties, motion and order, or amendment express or implied to conform to evidence.

[3] In absence of motion to amend pleadings, trial court erred in ruling on trustees' obligations to minor trust beneficiary where that issue had not been raised in the pleadings and where timely

objections alleging prejudice to efforts to interject evidence on issues of payments to that beneficiary had been made.

Hart Properties, Inc. v. Slack,
159 So. 2d 236 (Fla. 1963) states:

[3] Issues in cause are made solely by pleadings.

[5] Pleadings are intended to present, define and narrow issues and to form foundation of, and to limit, proof to be submitted on trial and objective sought is to reach issues of law and fact in one affirmative and one defensive pleading.

This purpose will not be served nor this objective achieved if operative issues, as distinguished from evidential issues, are allowed to be created outside the pleadings in depositions, admissions, affidavits, and the like, which may be filed in a cause. If this were allowed neither the parties nor the court would be able to say with certainty what the triable issues in a cause are.

[6] only instance in which legal issues not raised in pleadings may be decided is where issue, although not pleaded, is tried by consent of parties.

Lamb v Jones,
202 So. 2d 810, 815-816 [6,7] (Fla. 3rd. DCA 1967) (**TRUST LITIGATION**).

On page 816, this court refers to R.Civ.P. 1.15 (b) ***[1.190 (b) is current rule] *** and explains that when objection was made to new issue, and appellee proposed no amendments to the trial judge upon which he could make a ruling, the new issue could not be tried.

Appendix H

TRUST ADMINISTRATION CITATIONS

The Restatement of the Law, Second, Trusts, 2d., Section 242 (page 605) provides a clear explanation of the trustee's compensation claim status. See Paragraph 242 e. which states:

Lien for compensation. The trustee need not pay over income without deducting the compensation to which he is entitled with respect to the income, and need not pay over principal without deducting the compensation to which he is entitled with respect to the principal. To this extent the trustee has a security interest in the trust property for his compensation.

Similar statements to that above are made in The law of Trusts, Scott, Section 242.3; Bogert, Trusts and Trustees, Sections 972, 974; 90 C.J.S. Trusts, Section 406; and 76 Am Jur 2d. Trusts, Section 523 - 534.

Smith v. Jones, 162 So. 496 (Fla. 1935) Quotes from page 498:

[3] Courts of chancery have the inherent right, in dealing with trusts, to require payment out of the trust fund to the trustee, of all his necessary costs, expenses, and reasonable counsel fees for defending the trust estate, and in order that its decree shall be enforced, may declare a lien on the trust estate for such payment, and may also make provision for the sale of the trust property or so much thereof as may be necessary to pay the same. Bay Biscayne Co. v. Baile, 73 Fla. 1120, 75 So. 860.

[4] The general rule is that the expenses of properly administering trust are a lien on behalf of trustee for estate in his hands, and he will not be compelled to part with his control of estate until such expenses are paid. Bay Biscayne Co. v. Baile, supra.

Regarding reimbursement of attorney fees and cost for trust litigation, "Scott On Trusts" (1939), shows longstanding trust administration policy: currently reported as The Law of Trusts (Scott), Fourth Ed.

Section 246, Liability upon contract: page 1422: "* * * Where the trustee acting within his powers makes a contract with a third person in the course of the administration of the trust, although the trustee is ordinarily personally liable to the third person on the contract, he is entitled to indemnity out of the trust estate. If he has discharged the liability out of his individual property, he is entitled to reimbursement; if he has not discharged it, he is entitled to apply the trust property in discharging it, that is he is entitled to exoneration. Thus, where the trustee has properly employed an attorney in litigation affecting the trust estate, he may pay the attorney out of the trust estate, or if he has paid him out of his individual property, he is entitled to reimbursement out of the trust estate. If the trustee has acted properly in incurring the expense, he is entitled to indemnity even though it turns out that the trust estate is not benefited thereby. The mere fact that the litigation is unsuccessful does not preclude the trustee from obtaining indemnity out of the trust estate, provided that he was acting within his powers in incurring the expense." [Emphasis added]

Additional guidance regarding trust litigation is provided by "Restatement of the law, Trusts 2d" Sections 178, 244, 245, 246, and 200 e., 194 a. (2nd para.), and 167, 251, 253, 254, 254 e., and 258. Also see 76 Am Jur. Trusts, Sections 653 through 659.

90 C.J.S. Trusts, Section 232 states:

232 a. In General: Broadly speaking, the only ground for removal of a trustee is jeopardy to the trust or trust property. Some beneficial end must be achieved by removal of the trustee or it will not be justified. ** Trustees are not to be removed unless the facts disclose violation of the trust obligation or unsuitableness **. Unless the protection of the estate requires the court to displace a trustee, vested with a discretion by the creator of the trust, this should not be done. ** Some substantial reason must appear, and a trustee will not be removed at the mere whim or caprice of the beneficiary, *******.

232 c. (1) Antagonistic and Hostile Relations: A contingent remainderman will not be removed from trusteeship on the ground of adverse interest where he was designated trustee by the creator of the trust, but will be removed for adverse interest where not so designated. In re Weller's Estate, 108 N.E. 306, 267 Ill. 230

Shirk et al. v. Walker, 10 NE(2d) 192 (Mass. 1937)

[8] A trustee was not required to be removed on ground that he had become unsuitable because he had aroused permanent and justifiable hostility of income beneficiaries, where it was found, that one of income beneficiaries entertained some hostility towards trustee, trustee had no hostility towards such beneficiary, and his relations with other income beneficiaries had been friendly except as affected by bringing of suit.

[11] The existence of hostile feeling on part of beneficiaries towards a trustee does not relieve court of its duty to exercise its best judgment under all the circumstances.

[12] A trustee is not required to be removed because of hostile feeling of beneficiaries toward him, where such feeling does not interfere with proper administration of trust.

[9-12] (page 197) The facts established do not call for the removal of the trustee. There is no fraud or dishonesty. There is no incapacity or negligence which might indicate future peril to the trust property. There is a long record of faithful and efficient administration. The trustee has acquired a valuable experience of the renting capabilities of the building. At most there may have been a few errors of judgment or of law as to matters about which honest and intelligent opinions might differ, and these would be capable of easy correction and after a final decision of the court would not be likely to be repeated. In such cases courts do not commonly remove the trustee, especially when he was selected by the original settlor and not by the court itself. *Murdock v. Elliot*, 77 Conn. 247, 256, 58 A. 718; *Crabb v. Young*, 92 N.Y. 56, 66 et seq.; *Wylie v. Bushnell*, 277 Ill. 484, 505, 115 N.E. 618; *Waller v. Hosford*, 152 Iowa 176, 130 N.W. 1093; *Preston v. Wilcox*, 38 Mich. 578, 582; *Wilson v. Smoot*, 186 Ky. 194, 199., 216 S.W. 129; *Massey v. Stout*, 4 Del. Ch. 274; *Smith v. Heyward*, 115 S.C. 145, 164, 105 S.E. 275; *Nickels v. Philips*, 18 Fla. 732; Am. Law Inst. Restatement; Trusts, Section 107 (a) comment f.

Page 197: There are many trusts in which no trustee could fully perform his duty without incurring the hostility of some of the beneficiaries. This case bears little resemblance to Comstick v. Bowles (Mass.) 3 N.E. (2d) 817.

Appendix "I"

MARION BEACHAM REPORTS

Selected sections from two affidavit reports; the first report, eight pages, dated August 22,1989, was presented at trial (9/6/89) and is in the appeal record; report dated October 20, 1989, eight pages, was presented with Lon Jr's Motion For Rehearing after the trial, and it is also in the appeal record.

Appendix "I" 1

Affidavit Report, August 22, 1989

(Report written to Attorney Alan Fields, Jr)

Starting at Page 4, second paragraph:

In all my years, I cannot remember any situation similar to the one at hand where an individual trustee has worked as hard as Lonnie Willoughby, Jr. has with this trust. He had devoted an enormous amount of his time and talents to understanding complex fiduciary tax rules, estate tax laws, estate planning, Florida probate law, general fiduciary law, investments and the law of mortgages. He even has a working knowledge of the rules of civil procedure. All of these activities go far beyond what normal laymen would do if they were asked to serve as a trustee.

I think you would agree that Lon's allegiance to the trust and to his duties and responsibilities is extremely unusual. He takes his job very seriously. Even though he is a family member, he has reached a point where I think it can be said that he has almost become detached from the emotions usually found in such relationships and elevated himself to an almost unbiased status, similar to what is usually the case when corporate fiduciaries serve as trustees. At the bank, we often have to make tough decisions when our discretionary judgment has to

be exercised. How many of us could truly deal with our mothers in a totally unbiased fashion as Lonnie has often done?

All of Lonnie's work and detailed knowledge of the trusts and what needs to be done has gone unappreciated by Larry and Leona. Indeed, they appear to resent it and him. This trust has virtually been Lonnie's life for the past three or four years. Every step of the way, he has attempted to make well-reasoned decisions and recommendations to Larry and Leona. There is no one in my opinion, inside or outside of the family, who will ever have the intimate knowledge that Lon has gained about his duties and the purposes of the trust. This trust would not receive the kind of attention and diligence that Lon has given it from anyone else.

The complaint asks the Court to remove Lon because he stopped making income distributions to Leona. If the Court would allow it, I think that this bone of contention could easily be overcome by introducing evidence showing what assets Mrs. Willoughby has and her other sources of income. At this point and in her present circumstances, she would appear to be able to operate her financial affairs independently from the trust. I think Lon acted responsibly in his actions in this regard even though neither Leona nor Larry agreed with him. This was a very tough thing to do but understandable to me if you properly assess the totality of the circumstances. He had to have an income reserve to make sure that there would be enough available to meet certain future expenses. This is normal trustee behavior as the majority of time an income beneficiary receives a "net" amount each month, which can either be a set amount based on projected income and expenses for a year's time for the trust or a variable amount which is distributed each month after that month's expenses have been deducted.

What Lon did or proposed to do should certainly not be considered unusual, abusive, or

outside the scope of his responsibilities under the trust. Indeed, it would be quite embarrassing to have to approach a beneficiary about reimbursing a trust because the trustee did not retain sufficient funds to meet the trust's obligations. None of this was arbitrary or capricious on Lon's part.

The fiduciary tax returns are another area that has caused the rift between the trustee brothers to widen. Unless we happen to be working with a co-trustee who is also a CPA, almost without exception do we ever see any individual who has any idea about how these returns are prepared or what constitutes income or principal. Most of the time just knowing that a fiduciary must file income tax returns and when they are due is the extent of knowledge for most individual trustees. In the Willoughby situation, you have a trustee who has gone far beyond these bounds and learned about an area of tax law that can be confusing and often times perplexing.

Lon, from the beginning, has acted fairly with all parties. He has kept them well-informed about trust matters. He has been diligent in upholding the purposes of the trust and preserving and protecting the trust principal. He is a man who has taken his job seriously. On the other hand, Larry has been much less attentive to the trust and, at times uncooperative. In what shape would this trust be in if Larry was the sole trustee? In my opinion, I think Larry would probably have done what most individual trustees do and that is, he would have relied on attorneys, CPAs and perhaps other investment advisors to "run" the trust for him and furnish the basic expertise to get the job done. I think that he would be the first to tell you that he would not have had the time nor would he have taken the time to absorb as much knowledge as Lon has over the past few years. I may be giving him the benefit of the doubt on this, but I have to believe that he would have been diligent enough to at least "farm out" these responsibilities as opposed to ignoring his responsibilities altogether.

One certain fact of life in all of this is that this trust is irrevocable and it will continue to exist for an indefinite period of time. It is an almost universal principle of law that a trust will not be allowed to fail for want of a trustee. In this case, you have one person who is truly willing and, without question, in my mind, able to do the job in an efficient, cost-effective fashion. He has an intimate familiarity with the assets and the terms of the trust. He has an excellent background in investments and investment vehicles. He knows his mother's needs and what assets she has at her disposal. He is intensely serious about this whole matter. It would be an injustice to Lon to have him removed for doing what amounts to an incredible job, an incredible job the right way. I can say in all honesty that he has served faithfully and above reproach.

On the matter of compensation, it would be ludicrous to deny that Lon was entitled to compensation, so the only argument should be about the amount of compensation. This man has spent hundreds of man-hours in research, preparing documentation, and in dealing with the problems that have arisen. Rightfully or wrongfully, he has foregone opportunities to increase his own net worth just to immerse himself in the affairs of the trusts. Such devotion to duty is truly remarkable and extraordinary.

****

Page eight (final page)

In concluding all of this, I hope that what I have said will be of some value to the proceeding at hand. Even though I have personally only met with Lon, I have tried to be objective in this exercise. Lon has given his job a superhuman effort far beyond what most individuals would do under the circumstances. As near as I can tell, he has carried out his responsibilities extremely well under difficult circumstances. I have been absolutely amazed

by the infinite amount of detail he has recorded. At this point, he has become well-versed in virtually every aspect of trust administration. He has saved his family an enormous amount of money in tax savings in his orchestration of the set-up and administration of the trust. He has been zealously faithful to his father's wishes, and he has done his dead-level best to promote an understanding of all that is involved with his mother and brother. I hope the court will be supportive of his efforts and allow him to continue to serve as a trustee at fair compensation.

Please let me know if your have any questions.

/s/ Marion Beacham, Jr.
Vice President and
Trust Officer

(NCNB Bank, Greenville, S.C.)

Appendix "I" 2

MARION BEACHAM'S SECOND AFFIDAVIT REPORT

NCNB
Greenville Trust Offices
P.O. Box 608
Greenville, SC 29602
Telephone 803 / 271-5803

October 20, 1989

Lonnie E. Willoughby, Jr.
307 Poplar Lane
P.O. Box 127
Greenville, South Carolina 29662

Re: Review of Willoughby Trial Transcript
September 6, 1989

Dear Lon:

As you requested, I have completed my review of the testimony transcribed on September 6, 1989, (a copy of which you furnished me on October 13, 1989) in the suit filed by your mother to have you removed as a co-trustee of the trust agreement between your father and you and your brother, as the co-trustees. In the following paragraphs, I will attempt to briefly give you my opinion of the testimony presented, particularly with regard to the estate planning aspects of what was done and the conflicting information that evolved that day over the proper amount to be funded into the marital trust as a consequence of your dad's death on November 22, 1986.

It is obvious to me that your mother's case against you for mismanagement was primarily based on the fact that you allegedly sought to deliberately diminish her share of your father's estate by persuading him to execute the second amendment to the trust agreement thereby increasing the funds available to your. Through her attorney, she also alleged

that your actions in withholding income distributions for a period of time in 1988 were contrary to the dictates of the trust agreement and thus irresponsible actions warranting your removal. In the same vein, both your mother and Larry seemed to be offended that you would have the gall to charge for your services as a co-trustee in spite of the considerable evidence you had that charges were justified and authorized by the clear language in the agreement itself.

As you know, I myself have spent a large amount of time reviewing your actions and assessing your performance as evidenced by the attached statement of charges. Apparently, my letter to your attorney dated August 22, 1989 was never admitted into evidence on a technicality. If you need to offer this current letter to support a motion for a rehearing or for an appeal if such should become necessary, I would like to attach a copy of that August 22nd letter as a part of my assessment of this case and in further support of my view that you have done an extraordinary job on this trust. In other words, I would like for it to be a part of the overall record and submitted as additional evidence, and incorporated by reference as a part of the present letter, to justify your reasoning for requesting a rehearing or for an appeal.

I have seen nothing in my investigation of this transcript that would change any of my personal views about your performance as expressed in that letter.

As I read the transcript, the first thing that I found objectionable was Mr. Smith's contention that your interpretation of the trust and your actions as a family member and as a co-trustee were designed to accomplish one objective, i.e., to reduce your mother's income and thus increase your income. He contends that you falsely justified these actions to your parents and your brother as saving money for the Willoughby Family by reducing or eliminating administrative expenses and estate taxes.

Lonnie Stanley, the CPA who prepared the Form 706 (U.S. Estate Tax Return), clearly appeared to me to be confused about the finer points of estate planning and incapable of properly verbalizing the effect of the second amendment on both your father and your mother's estate plans. He also demonstrated that he did not understand marital deduction concepts. Since Alan Fields did little to refute any of Mr. Stanley's erroneous testimony, he too showed that he had little knowledge of what the estate plan was all about and what amounts were to be funded into the marital trust and the family trust.

If it would please you and the Court, I would like to clarify these concepts and what was done by the amendment, and thus prove that your mother's interest in the overall family estate was not diminished and her income was not materially reduced.

********** skip over to page 3 **********

One objective of proper estate planning is to avoid the tax at the death of the surviving spouse. Essentially, that was the purpose of the second amendment - to insure the use of the full estate tax exemption in both your father and your mother's estates and virtually eliminate costly estate taxes.

Initially, the original trust assets placed in your dad's trust and your mom's identical trusts only comprised a small portion of their total assets. Their joint ownership of the Penn Oaks Apartments and the San Marco Motel was a problem from an estate planning standpoint because these assets would pass outside their wills to the survivor and create the problem that I alluded to above - a substantial part of your dad's unified credit would have been wasted and your mother's separate estate would have greatly exceeded her credit and significant estate taxes would have been incurred at her subsequent death.

You recognized that their original trust agreements were incomplete and inadequate from an estate planning standpoint. Several times in your testimony reference is made to saving taxes on "this estate." I think it is important to emphasize that this term meant our father's own assets, your mother's own assets, and the assets owned by the two of them jointly. The original trust agreement only accomplished a part of the overall objective of saving estate taxes because your mom's estate was still going to be far larger than the exemption or unified credit if the planning had stopped here.

In reviewing your testimony and all of the previous correspondence that you provided me with, it is clear that while saving estate taxes was a primary motive in developing the second amendment, it was not the only motive. Your father was concerned about your mom's propensity for spending money on dubious causes and clearly wanted to restrict the funds that would be available to her at his death. It was his expressed desire for the estate to be divided three equal ways, or as close to this as possible. It is clear from the correspondence that I have seen that Larry was aware of this and your mother was aware of it and was agreeable to it.

For these reasons, namely, the inadequacy of the original trust agreement to save taxes on their total estates and their desires for you and Larry to share in their estates without waiting until both parents were deceased (as would have been the case under the original trust agreement), the second amendment was prepared and executed. Simultaneously with it, the mortgage notes on the two properties were funded into your dad's trust. This alleviated the problem of the jointly-owned property defeating the utilization of the unified credits in both of their estates.

There were some references in the testimony to splitting their estates so that each would have approximately 50% of their total estates in their

trusts. I did not note that anyone had ever considered this possibility in my review of the correspondence. Even if each owned one-half, or 50%, of the total joint estate, there would have still been an estate tax problem because a large part of your dad's 50% would have been included in your mom's estate and estate tax consequences would have resulted at her subsequent death. The use of his unified credit would have been minimal because there would have been a large marital deduction at his death.

At this point, it becomes important to review Lonnie Stanley's testimony. It was his belief that this second amendment was unnecessary to avoid estate taxes. That statement was true only to your dad's estate as everyone understood it at the time. The second amendment was designed to insure that none of your dad's unified credit ($500,000 at the time of his death) would have been wasted. The family trust was to contain assets valued to the maximum limit of the credit with the balance of the assets to comprise the marital trust. In this fashion, both your dad and mom's estates could avail themselves of each of their full unified credits and there would have been zero estate taxes at your mother's death. The second amendment, which created an ewe paragraph 5 was absolutely essential to accomplish the estate tax avoidance motive as you, Larry and your mom and dad understood. Mr. Stanley failed to either realize or point out this essential fact about the second amendment.

Your mom's attorney created the impression that the amendment only served your interest by reducing the income available to her and increasing the amount going to you and further contending that you even underfunded her marital trust contrary to the terms of the trust agreement.

To properly understand this, we need to review the Form 706 and apply the language in paragraph 5 of the amendment to the creation of the marital and family trusts keeping in mind the points that I have made.

***** two pages of mathematical calculations and explanations of the proper method of evaluating the proper funding of the Marital and Family Trusts. *********

Hopefully, this extensive recounting of the explanation of the amendment language will clarify all of the erroneous testimony.

As you know, you informed Larry of these calculation in August of 1987 and told him then exactly how much income would be available to your mom. [based upon CPA Stanley's Form 706 calculations] At that point, Leona was looking at an estate in her right of well over $500,000 consisting of the $308,245 by reason of your dad's death, her own trust of $100,000 and the balance of the "joint" assets ($127,659).

It was ludicrous for anyone to infer that your planning deprived her of income to your benefit when she essentially had income available to her from various sources in excess of $3,500 per month. It was also ludicrous for Mr. Smith to state that you underfunded the marital interest by 7% when I have shown it was well over 34%.

I feel that it would be unnecessary to reiterate my comments in the attached letter since I think that it explains why I felt your were justified withholding income payments because they were incorrectly calculated due to the fact that your fees would not be considered.

Also, my comments on your fees in that letter are about all that I can relate about that matter.

In conclusion, I would like to once again say that I think that you have done an extraordinary diligent job as a co-trustee for your family. You obviously have the experience and background concerning investments that a trustee needs to preserve and protect trust principal. The management of the mortgage notes is a job some people may take for

granted, but you have performed the fiduciary duties in overseeing this asset that professional trustees are compelled to perform. I find that your certainly have not acted in a capricious, arbitrary fashion. You have tried your best to be informative, cooperative, and, above all, to act in a responsible manner.

I hope that you get a favorable ruling as that is how I think the Court would see your case if all of the erroneous information presented at the trial is discounted.

Good luck.

Very truly yours,

/s/ Marion W. Beacham, Jr.
Vice President and
Trust Officer

MWB, Jr.:vm

Appendix J

LEONA'S DEPOSITION

Selected sections only:

DIRECT EXAMINATION

BY MR. FIELDS:

Q: Would you state your name and address, please ma'am?
A: Leona S. Willoughby. S is for Stephens, with a ph.
Q: And where do you reside at, Mrs. Willoughby?
A: On Riverside Drive and Roberts Boulevard in San Mateo Estates. On the corner.
Q: And do you own that home?
A: Yes, I do.
Q: Is there any indebtedness on it?
A: No Sir.
Q: You are the plaintiff in a complaint seeing to have your son, Lonnie E. Willoughby, Jr., removed as trustee?
A: Yes Sir.
Q: And you attached to your complaint a revocable trust agreement and then an amendment to that agreement?
A: Yes Sir.
Q: Are those the trust agreements that you're speaking of and that you claim that your son is not acting properly as a trustee?
A: Yes Sir.
Q: Can you please tell me, ma'am, what your consider your son has don that makes him unfit as a trustee? Your son, Lonnie.
A: Well, he doesn't give me enough money to live on out of the trust.
Q: Is that the sole reason?
A: That's the biggest of it.
Q: What other reasons do you have?
A: Well, I don't think he's worked in my interest with the trust at all. That's all. That's it.

Q: Now can you please tell us some specific matters wherein you think he is not acting in your best interest?
A: Well, my husband and I, when he was living, had -- our monthly bills were between three and five thousand dollars a month. I was having help every day with him, and then the trust was paying for the income taxes, for the estimated income taxes quarterly. And when my husband died, I got less than half that much. And it's just not enough. And it keeps coming down lower and lower.
Q: You're saying that the distribution that comes to you isn't sufficient?
A: To meet my needs, yes sir.
Q: Have you ever approached your trustees, both of them, and told them that you consider that your income was insufficient and asked them to invoke any provision of the trust to give you more income?
A: I have told them both, not in their presence with each other, that I needed more income.
Q: Have you asked either of the trustees to invade part of the principal of the trust in order to give you more income?
A: No, I've just asked them to give me more income.
Q: You don't maintain that your son, Lonnie Willoughby, has mismanaged the trust, do you?
A: No Sir.
Q: Other than the statement that you feel you're not obtaining enough money from the trust, do you think that either of the trustees have not properly maintained, invested, reinvested, or managed the trust assets?
A: No. I don't feel they have mismanaged them. I maybe misunderstood your question.
Q: No mismanagement?
A: No.
Q: Do you have any other trust which you are a beneficiary?
A: I have a trust.
Q: You have a trust?
A: Which I canceled.
Q: What was the nature of that trust?
A: You mean how much money was in it?

Q: Yes, ma'am.
A: One hundred thousand.
Q: And you canceled that trust?
A: Yes, sir, and I bought a condominium in North Carolina, which I intended to move in as soon as I sold my home.
Q: May I ask the value of the North Carolina condominium?
A: A hundred and twenty thousand when I purchased it. I've had to add some things to it.
Q: How much have you added to it in value?
A: I don't know right down to the penny, but I'd say about five thousand.
Q: So you say it's now worth about a hundred and twenty-five?
A: Yes sir.
Q: And your home?
A: At least that much.
Q: Pardon me?
A: My home?
Q: And your home here, you're attempting to sell?
A. Yes sir.
Q: And that's on the river in San Mateo Estates?
A: Yes sir.
Q: And what is the value or sale price on the home?
A: Well, I had it appraised when my husband died and they appraised it at $122,000. Of course, I'm asking more than that for it and the real estate is having to ask for his commission above what I'm asking, so he has -- he's asking a hundred sixty-five with room enough to negotiate.
Q: Do you have any other source of income other than the Lonnie Willoughby trust?
A: I have a little money outside the trust. I have a little interest that the monies bring in.
Q: What is the source of that? That income?
A: The amount of it?
Q: Well, first of all, what's the source of the fees?
A: I have two CD's.
Q: How much are they worth?
A: I think one is 15,000 at Security First and the other is 57,000 at First Union.

Q: And how much income have you received from them in the past?
A: I haven't used any of it.
Q: You're just letting it build up?
A: Yes sir.
Q: Do you have any other sources of income?
A: I have some money.
Q: Is it invested or just a savings account?
A: It's in money market funds.
Q: Money market funds?
A: Yes.
Q: What exactly -- how much is that?
A: One at Security that has around -- since I deposited the last check it's around 24,000. Something like that. And I have a checking account there to pay my bills, and I keep taking the money out of that money market fund and adding to my checking account.
Q: The checking account is in Security First?
A: Yes sir.

Appendix K

CRIMINAL STATUTES

18 U.S.C. 241

If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with the intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

****

This section providing penalty for conspiracy against rights of citizens and section 242 of this title providing penalties for deprivation of rights under color of law were designed to prevent violations of all rights guaranteed under U.S.C.A Amendment 14, including both due process and equal protection. *U.S. v. City of Philadelphia*, C.A. Pa. 1980, 644 F. 2d 187

Single conspiracy may have several purposes, but if one of them , whether primary or secondary, be violation of federal law, conspiracy is unlawful under federal law. *Anderson v. U.S.*, W. Va. 1974, 94 S.Ct. 2253, 417 U.S. 211, 41 L.Ed.2d 20.

Any conspiracy to deprive a person of any of his constitutional rights is reprobated. *Martynn v. Darcy*, D.C. La. 1971, 333 F.Supp 1236.

FLORIDA CRIMINAL STATUTE 839.13

839.13 Falsifying records. -

(1) If any judge, justice, mayor, alderman, clerk, sheriff, coroner, or other public officer, or any person whatsoever, shall steal, embezzle, alter, corruptly withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, or contract, or any paper filed in any judicial proceeding in any court of this state, or shall knowingly and willfully take off, discharge or conceal any issue, forfeited recognizance, or other forfeiture, or other paper above mentioned, or shall forge, deface, or falsify any document or instrument recorded, or filed in any court, or any registry, acknowledgement, or certificate, or shall fraudulently alter, deface, or falsify any minutes, documents, books, or any proceedings whatever or belonging to any public office within this state; or if any person shall cause or procure any of the offenses aforesaid to be committed, or be in anywise concerned therein, the person so offending shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

****

775.082 Penalties. -

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year.

****

775.083 Fines. -

(1) A person who has been convicted of an offense other than a capital felony may be

sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

(d) $1,000, when the conviction is of a misdemeanor of the first degree

(f) Any higher amount equal to double the pecuniary gain derived from the offense by offender or double the pecuniary loss suffered by the victim.